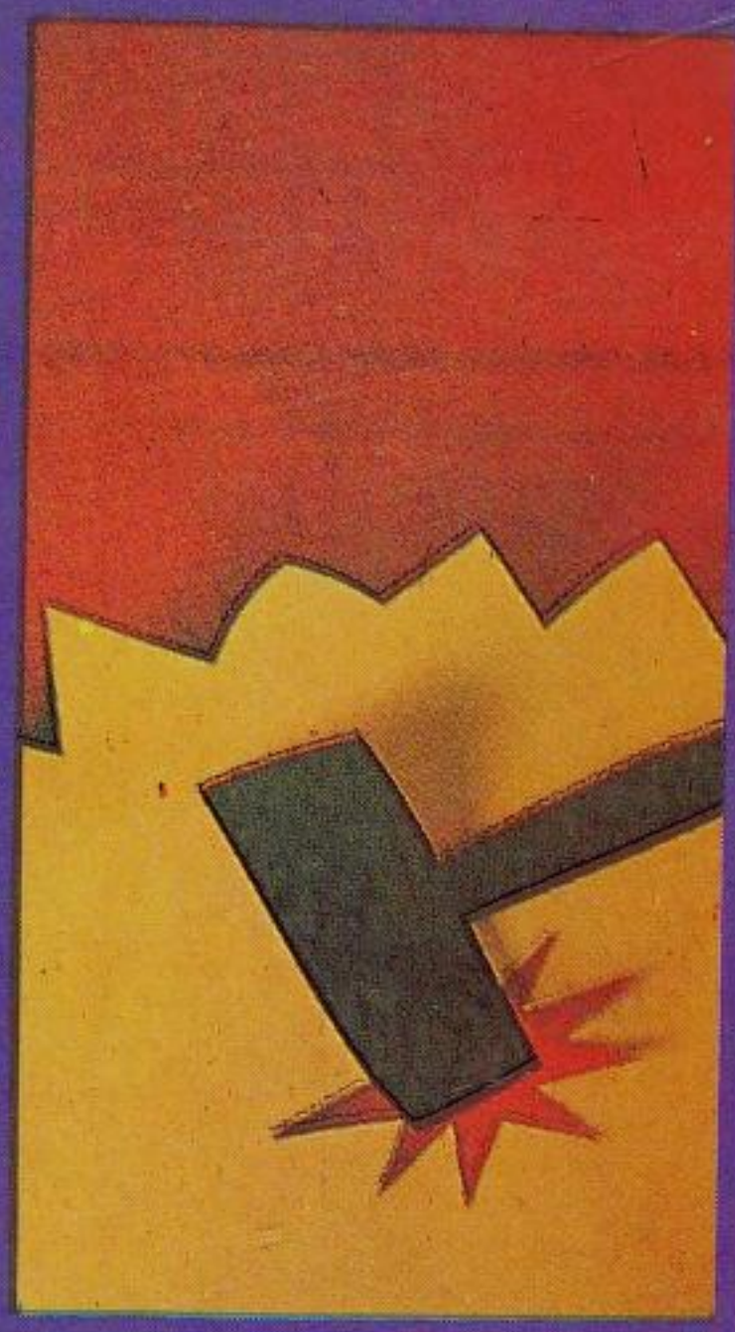
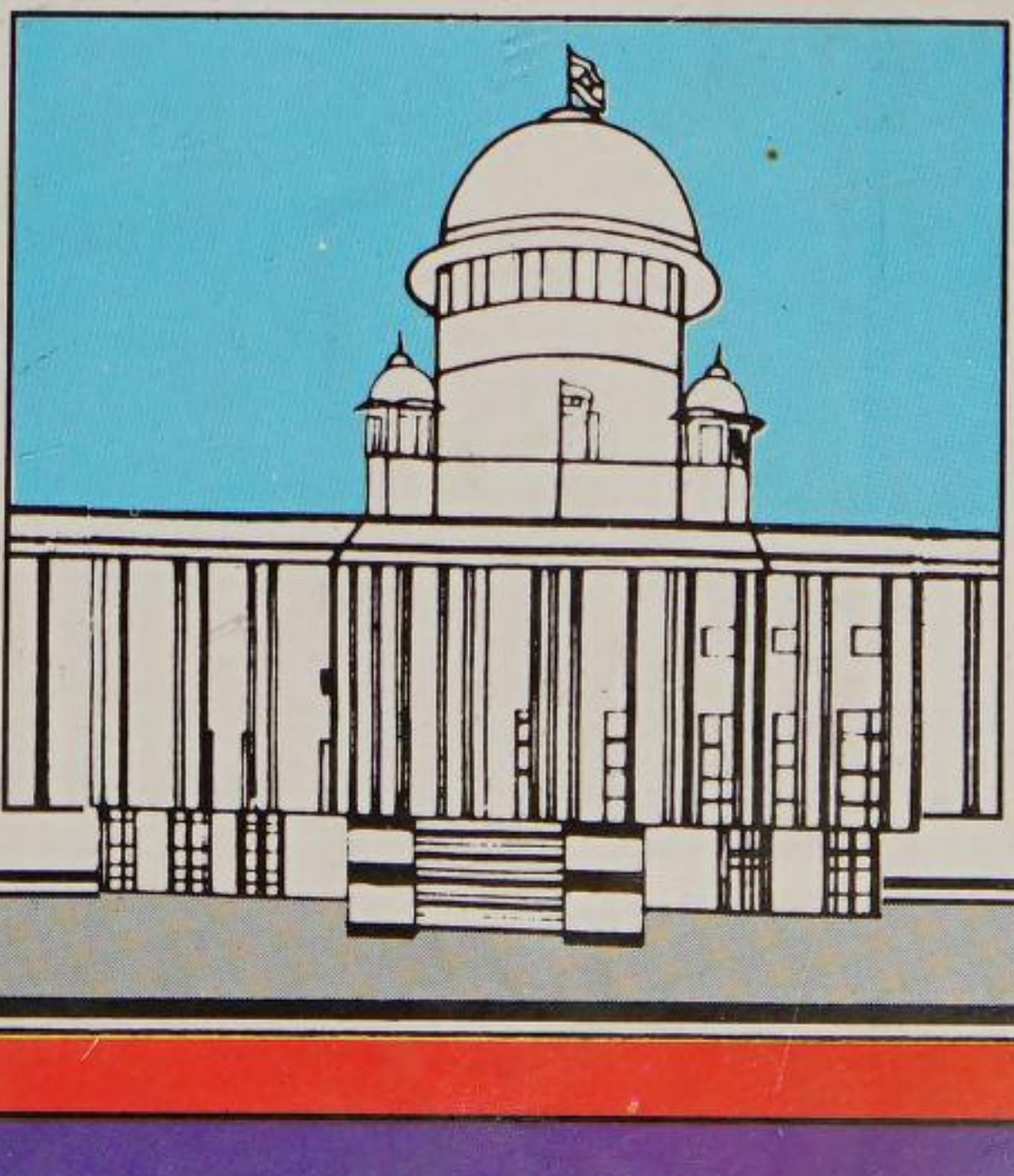
Constitution Fundamental Rights and Judicial Activism in India





Ravi Prakash
Premlata Sharma

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Every constitution is based on certain definite principles of social, political and economic relevance which constitutes its philosophy.

The framers of the Constitution of India, though having borrowed material from other countries worked relentlessly to give us a well-formed Constitution with an originality of its own.

The book Constitution, Fundamental Rights and Judicial Activism in India is divided into three parts. Relevant portions of the Constitution affecting our social, political, economic and national life have been presented in order to enlighten the public and spread a bit of awareness of our Constitution. Case laws have been referred to in order to highlight the legal interpretations of the provisions of the Constitution.

With criminality in politics increasing everyday, the judiciary has to play an important and positive role. Some important present day judicial activities have been highlighted for the benefit of the citizen and students of law and political science.

This book will prove of immense help to students of law, political science as well as social science, those preparing for degree and postgraduate examinations, and also to those preparing for competitive examinations and the general public.

CONSTITUTION, FUNDAMENTAL RIGHTS AND JUDICIAL ACTIVISM IN INDIA

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Ravi Prakash

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Preface

THE constitution of a country is its legal document. The framing of the Constitution of India was a triumph of a revolution. It was completed and adopted in 1949. Some of the provisions were given effect in 1949 and the rest of the provisions of the Constitution came into effect from 26 January 1950.

The founding fathers despite facing a lot of constraints and difficulties did a magnanimous job to give us a well-constituted Constitution.

This book is written with a view that the citizen may be made aware that they have certain 'fundamental rights' which in no way be changed or altered by the judiciary or the legislature except by amending the Constitution itself.

The book has been divided in three parts—Constitution, Fundamental Rights and Judicial Activism.

With the number of political wrangles taking place these days along with increased gangsterism in the country, the judicature has taken a powerful stand by pressurising the investigative organisations to investigate impartially and without delay in order to end the nexus between the criminals, politicians and others.

The editor has consulted a number of sources as well as newspapers in designing the book. It will prove useful to students of constitutional law, political science and also to those preparing for degree and postgraduate examinations, competitive examinations and to the general public.

Editor

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CHAPTER 1

Some Excerpts from the Constitution

IN this chapter some relevant portions of the constitution are presented. There is a widespread general lack of awareness about the constitution in public. Very few people are aware about their fundamental rights and constitutional safeguards provided in the constitution. In order to enlighten the public and spread a little bit of awareness about the constitution, some relevant portions of the constitution affecting our social and national life are presented.

PART II[1]

CITIZENSHIP

5. Citizenship at the commencement of the Constitution.— At the commencement of this Constitution, every person who has his domicile in the territory of India and—

(*a*) who was born in the territory of India; or

(*b*) either of whose parents was born in the territory of India; or

(*c*) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India.

6. Rights of citizenship of certain persons who have migrated to India from Pakistan.— Notwithstanding anything in Article 5, a person who has migrated to the territory of India

from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

(*a*) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(*b*) (*i*) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(*ii*) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

7. Rights of citizenship of certain migrants to Pakistan.— Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (*b*) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

Note.— In its application to the State of Jammu and Kashmir the following further proviso shall be *added* to Article 7:—

"Provided further that nothing in this article shall apply to a permanent resident of the State of Jammu and Kashmir who, after having so migrated to the territory now included in Pakistan, returns to the territory of that State under a permit for resettlement in that State or

permanent return issued by or under the authority of any law made by the Legislature of that State, and every such person shall be deemed to be a citizen of India." Constitution (J. & K.) Order, 1954, Para 3 (*a*) (*b*).

8. Rights of citizenship of certain persons of Indian origin residing outside India.— Notwithstanding anything in Article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.— No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State.

10. Continuance of the rights of citizenship.— Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

11. Parliament to regulate the right of citizenship by law.— Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

PART III

FUNDAMENTAL RIGHTS

General

12. Definition.— In this part, unless the context otherwise requires, "the State" includes the Government and Parliament

of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

13. Laws inconsistent with or in derogation of the fundamental rights.— (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(*a*) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(*b*) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Note.— In its application to the State of Jammu and Kashmir, in Article 13, references to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, *i.e.*, the 14th day of May, 1954; Para 4 (*a*) of the order.

Right to equality

14. Equality before law.— The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

[2]**15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.**— (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(*a*) access to shops, public restaurants, hotels and places of public entertainment; or

(*b*) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes and the Scheduled Tribes.

Note.— In its application to the State of Jammu and Kashmir, reference to Scheduled Tribes in clause (4) of Article 15 shall be omitted: Constitution (J & K) Order, 1954, para 4 (*b*).

16. Equality of opportunity in matters of public employment.— (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3)[3] Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office[4] [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Note.— The corresponding sections of the Government of India Act, 1935, were :

"298. *Persons not to be subjected to disability by reason of race, etc.*— (1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such ground from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India.

(2) Nothing in this section shall affect the operation of any law which—

(*a*) prohibits, either absolutely or subject to exceptions, dispositions of agricultural land situate in any particular area and owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with agricultural in that area or as being an aboriginal tribe, in favour of or for the benefit of any person not belonging to that class.

(*b*) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law.

(3) Nothing in this section shall be construed as derogating from the special responsibility of the Governor-General or of a Governor for the safeguarding of the legitimate interests of minorities.

(4)....."

"275. *Persons not be disqualified by sex for holding certain offices.*—A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in India other than such a service or post as may be specified by any general or special order made—

(*a*) by the Governor-General in the case of services and posts in connection with the affairs of the Federation;

(*b*) by the Governor of a Province in the case of services and posts in connection with the affairs of the Province;

(*c*) by the Secretary of State in relation to appointment made by him.

Provided that any such agreement with respect to joint services and post as is mentioned in Chapter II of this Part of

this Act may provide for the powers conferred by this section on the Governor-General and the Governor of a Province being exercised, with respect to the services or posts to which the agreement applies by the Governor-General or a specified Governor."

17. Abolition of untouchability.— "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

18. Abolition of titles.— (1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind form or under any foreign State.

Right to Freedom

19. Protection of certain rights regarding freedom of speech, etc.— (1) All citizens shall have the right—

(*a*) to freedom of speech and expression;

(*b*) to assemble peaceably and without arms;

(*c*) to form associations or unions;

(*d*) to move freely throughout the territory of India;

(*e*) to reside and settle in any part of the territory of India;

(*f*) to acquire, hold and dispose of property; and

(*g*) to practice any profession, or to carry on any occupation, trade or business.

[5](2) Nothing in sub-classes (*a*) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [6][the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (*b*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of, [6][the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (*c*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [6][the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (*d*), (*e*) and (*f*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the rights conferred by the said sub-clause, and in particular, [7][nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(*i*) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(*ii*) the carrying on by the State, or by a corporation owned or controlled by State, of any trade, business industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.]

Note.— In its application to the State of Jammu and Kashmir, for a period of fifteen years from the 14th May, 1951, Article 19 shall be subject to the following modifications.

(*i*) in clauses (3) and (4), after the words "in the interests of", the words "the security of the State or" shall be *inserted;*

(*ii*) in clause (5), for the words "or for the protection of the interests of any Scheduled Tribe", the words "or in the interests of the security of the State" shall be substituted; and

(*iii*) the following new clause shall be *added*, namely :—

"(7) the words "reasonable restrictions" occurring in clauses (2), (3) (4) and (5) shall be construed as meaning such restrictions as the appropriate Legislature deems reasonable" : Constitution (J & K) Order, 1954 Para 4 (*d*).

20. Protection in respect of conviction for offences.— (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(*a*) to any person who for the time being is an enemy alien; or

(*b*) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless—

(*a*) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (*b*) of clause (7); or

(*b*) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (*a*) and (*b*) of clause (7).

Note.— In its application to the State of Jammu and Kashmir, in clause (4) of Article 22, for the word "Parliament", the words "the Legislature of the State" shall be substituted: Constitution (J & K) Order, 1954, Para 4 (*e*).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority, the authority making the order shall, as soon as may be, communicate to such person the grounds under which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(*a*) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (*a*) of clause (4);

(*b*) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(*c*) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (*a*) of clause (4).

Note.— In its application to the State of Jammu and Kashmir, in clause (7) of Article 22, for the word "Parliament", the words "the Legislature of the State" shall be *substituted*; Constitution (J & K) Order, 1954.

Right against Exploitation

23. Prohibition of traffic in human beings and forced labour.—

(1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

24. Prohibition of employment of children in factories, etc.— No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion.— (1) Subject to public order, morality and health and to the other provision of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the state from making any law—

(*a*) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(*b*) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.— The wearing and carrying of *Kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II.— In sub-clause (*b*) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.— Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(*a*) to establish and maintain institutions for religious and charitable purposes;

(*b*) to manage its own affairs in matters of religion;

(*c*) to own and acquire movable and immovable property; and

(*d*) to administer such property in accordance with law.

27. Freedom as to payment of taxes for promotion of any particular religion.— No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institution.— (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

29. Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. Rights of minorities to establish and administer educational institutions.— (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institution of their choice.

(2) The State shall not, in granting aid to educational institution discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Right to Property

31. Compulsory acquisition of property.— (1) No person shall be deprived of his property save by authority of law.

(2)[8] No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principle on which and the manner in which the compensation is to be determined and, no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so

assented to shall not be called in question in any court on the ground that it contravenes the provision of clause (2).

(5) Nothing in clause (2) shall affect—

(*a*) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(*b*) the provisions of any law which the State may hereafter make—

(*i*) for the purpose of imposing or levying any tax or penalty, or

(*ii*) for the promotion of public health or the prevention of danger to life or property, or

(*iii*) in pursuance of any agreement entered into between the Government of the dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of sub-section (2) of Section 299 of the Government of India Act, 1935.

Note.— In its application to the State of Jammu and Kashmir, in Article 31, clauses (4) and (6) shall be omitted and for clause (5) the following clause shall be substituted, namely—

"(5) Nothing in clause (2) shall affect—

(*a*) the provisions of any existing law; or

(*b*) the provisions of any law which the State may hereafter make—

(*i*) for the purpose of imposing or leaving any tax or penalty; or

(*ii*) for the promotion of public health or the prevention of danger to life or property; or

(*iii*) with respect to property declared by law to be evacuee property." : Constitution (J & K) Order, 1954, Para 4 (f).

(2) The corresponding section of the Government of India Act, 1935 was :

"299. *Compulsory acquisition of land, etc.* (1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal or a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land-revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In section 'land' includes immovable property of every kind and any rights in or over such property, and 'undertaking' includes part of an undertaking."

[9][**31-A. Saving of laws providing for acquisition of estates, etc.**— [10][(1) Notwithstanding anything contained in Article 13, no law providing for—

(*a*) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(*b*) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(*c*) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporation, or

(*d*) the exitinguishment or modification of any rights of managing agents, secretaries and treasurers, managing

directors or managers of corporation, or of any voting rights of shareholders thereof, or

(*e*) the exitinguishment or modification of any rights accruing by virtue of any agreement, lease or license for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31:

[11][Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent]:

[12][Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]

(2) In this article,—

[13][(*a*) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(*i*) any *jagir, inam* or *muafi* or other similar grant and in the States of Madras and Kerala, *janmam* right ;

(*ii*) any land held under ryotwari settlement ;

(*iii*) any land or let for purposes of agriculture or for purposes including waste land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans];

(*b*) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, [14][*raiyat*,

under-raiyat] or other intermediary and any rights or privileges in respect of land revenue].

Note.— In its application to the State of Jammu and Kashmir, for sub-clause (*a*) of cl. (2) of Article 31-A, the following sub-clause shall be *substituted*, namely:—

"(*a*) 'estate' shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—

(*i*) sites of buildings and other structure on such land;

(*ii*) trees standing on such land;

(*iii*) forest land and wooded waste;

(*iv*) area covered by or fields floating over water ;

(*v*) sites of *jandars* and *gharats* ;

(*vi*) any *jägir, inam, muafi* or *mukarrari* or other similar grant, but does not include—

(*i*) the site of any building in any town, or town area or village *abadi* or any land appurtenant to any such building or site;

(*ii*) any land which is occupied as the site of a town or village; or

(*iii*) any land reserved for building purposes in a municipality or notified area or cantonment or town area or any area for which a town planning scheme is sanctioned".

Constitution (J & K) Order, 1954, Para 4(&).

[15][**31B. Validation of certain Acts and Regulations.**— Without prejudice to the generality of the provisions in Article 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]

Right to Constitutional Remedies

32. Remedies for enforcement of rights conferred by this Part.— (1) The right to move the Supreme Court by appropriate

proceedings for the enforcement of the rights conferred by this part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the power exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Note.— In its application to the State of Jammu & Kashmir, clause (3) of Article 32 shall be omitted, and after clause (2), the following new clause shall be inserted, namely:—

"(2A) Without prejudice to the power conferred by clause (1) and (2), the High Court shall have throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories, directions or orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by this Para": Constitution (J & K) Order, 1954, Para 4(h).

33. Power to Parliament to modify the rights conferred by this Part in their application to forces.— Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

34. Restriction on rights conferred by this Part while martial law is in force in any area.— Notwithstanding anything in the foregoing provision of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any

area within the territory of India where martial-law in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial-law in such area.

35. Legislation to give effect to the provisions of this Part.— Notwithstanding anything in this Constitution,—

(*a*) Parliament shall have, and the Legislature of a State shall not have, Power to make laws—

(*i*) with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 33 and Article 34 may be provided for by law made by Parliament; and

(*ii*) for prescribing punishment for those acts which are declared to be offences under this Part;

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (*ii*);

(*b*) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (*i*) of clause (*a*) or providing for punishment for any act referred to in sub-clause (*ii*) of that clause shall, subject to the thereof and to any adaptation and modification that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.— In this article, the expression "law in force" has the same meaning as in Article 372.

Note.— (1) In its application to the State of Jammu and Kashmir, in Article 35,—

(*i*) references to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954 (14th May, 1954);

(*ii*) in clause (*a*) (*i*), the words, figures and brackets "clause (3) of Article 16 clause (3) of Article 32" shall be omitted; and

(*iii*) after clause (*b*), the following clause shall be *added*, namely:—

"(*c*) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this Part but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of fifteen years from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof." Constitution (J & K) Order, 1954, Para 4 (*i*).

(2) In its application to the State of Jammu and Kashmir, after Article 35, the following new article shall be added, namely:—

"35A. *Saving of laws with respect of permanent residents and their rights.*—Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State,—

(*a*) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or

(*b*) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects—

(*i*) employment under the State Government;

(*ii*) acquisition of immovable property in the State;

(*iii*) settlement in the State; or

(*iv*) right to scholarships and such other forms of aid as the State Government may provide,

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part."; Constitution (J &K) Order, 1954, Para 4 (j).

PART IV[16]

DIRECTIVE PRINCIPLES OF STATE POLICY

36. Definition.— In this part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

37. Application of the Principles contained in this Part.— The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

38. State to secure a social order for the promotion of welfare of the people.— The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

39. Certain principles of policy to be followed by the State.— The State shall, in particular, direct its policy towards securing—

(*a*) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(*b*) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(*c*) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(*d*) that there is equal pay for equal work for both men and women;

(*e*) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(*f*) that childhood and youth are protected against exploitation and against moral and material abandonment.

40. Organisation of village panchayats.—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

41. Right to work, to education and to public assistance in certain cases.— The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

42. Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief.

43. Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

44. Uniform civil code for the citizens.— The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

45. Provision for free and compulsory education for children.— The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.— The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.— The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48. Organisation of agriculture and animal husbandry.— The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and drought cattle.

49. Protection of monuments and places and objects of national importance.— It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, [17][declared by or under law made by Parliament] to be of national importance, from spoilation disfigurement, destruction, removal, disposal or export, as the case may be.

50. Promotion of international peace and security.— The State shall endeavour to—

(*a*) promote international peace and security;

(*b*) maintain just and honorable relations between nations;

(*c*) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and

(*d*) encourage settlement of international disputes by arbitration.

PART V

THE UNION

CHAPTER I.—THE EXECUTIVE

The President and Vice-President

52. The President of India.— There shall be a President of India.

53. Executive power of Union. (1) The Executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provisions, the supreme command of the Defense Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

(*a*) be deemed to transfer to the President any functions conferred by any existing law on the government of any State or other authority; or

(*b*) prevent Parliament from conferring by law functions on authorities other than the President.

54. Election of President.— The President shall be selected by the member of an electoral college consisting of—

(*a*) the elected members of both Houses of Parliament; and

(*b*) the elected members of the Legislative Assemblies of the State.

55. Manner of election of President.—(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:—

(*a*) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

(*b*) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (*a*) shall be further increased by one;

(*c*) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (*a*) and (*b*) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the

single transferable vote and the voting at such election shall be by secret ballot.

Explanation.— In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

Note.—For the purposes of this article, the population of the State of Jammu and Kashmir shall be deemed to be forty-four lakhs and ten thousand; Constitution (J & K) Order, 1954, Para 5 (*a*).

56. Term of office of President.—(1) The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(*a*) the President may, by writing under his hand addressed to the Vice-President, resign his office;

(*b*) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in Article 61;

(*c*) the President shall, notwithstanding the expiration of his term continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (*a*) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

57. Eligibility for re-election.—A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

58. Qualifications for election as President.— (1) No person shall be eligible for election as President unless he—

(*a*) is a citizen of India.

(*b*) has completed the age of thirty-five years, and

(*c*) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Government.

Explanation.— For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the

Governor[18] of any State or is a Minister either for the Union or for any State.

59. Conditions of President's office.—(1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to these of his official residences and shall be also entitled to such emolument, allowances and privileges as may be determined by Parliament by law and, until revision in that behalf is so made, such emolument, allowances and privileges as are specified in the Second Schedule.

(4) The emolument and allowances of the President shall not be diminished during his term of office.

60. Oath or affirmation by the President.—Every President and every person acting as President or discharging the function of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court available, in oath or affirmation in the following form, that is to say—

"I, A.B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will faithfully execute the office of President (or discharge the function of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

61. Procedure for impeachment of the President.—(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless--

(*a*) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of member of the House

has been given of their intention to move the resolution, and

(*b*) such resolution has been passed by a majority of not less than two thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

62. Time of holding election to fill vacancy in the office of President and the terms of office of person elected to fill casual vacancy.—(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of Article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

63. The Vice-President of India.—There shall be a Vice-President of India.

64. The vice-President to be *ex-officio* Chairman of the Council of States.— The Vice President shall be *ex-officio* Chairman of the Council of States and shall not hold any other office of profit:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under Article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled

to any salary or allowance payable to the Chairman of the Council of States under Article 97.

65. The Vice-President to act as President or to discharge his functions during casual vacancy in the office, or during the absence of President.— (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

66. Election of Vice-President.— (1) The Vice-President shall be elected by the [19][members of an electoral college consisting of the members of both houses of Parliament] in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for Vice-President unless he—

(*a*) is a citizen of India;

(*b*) has completed the age of thirty-five years; and

(*c*) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the

Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Government.

Explanation.— For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Government [20]* * * of any State or is a Minister either for the Union or for any State.

67. Term of office of Vice-President.— The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(*a*) a Vice-President may by writing under his hand addressed to the President, resign his office;

(*b*) a Vice-President may, be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the people; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution ;

(*c*) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.— (1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of Article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

69. Oath or affirmation by the Vice-President.— Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say—

"I, A. B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

70. Discharge of President's functions in other contingencies.— Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

71. Matters relating to or connected with the election of a President or Vice-President.— (1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

[21](4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.— (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(*a*) in all cases where the punishment or sentence is by a Court-Martial;

(*b*) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(*c*) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (*a*) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court-Martial.

(3) Nothing in sub-clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor[22] of a State under any law for the time being in force.

Note.— The corresponding section of the Government of India Act, 1935, was:

295. *Provisions as to death sentences.*—(1) Where any person has been sentenced to death in a Province the Governor General in his discretion shall have all such powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council immediately before the commencement of Part III of this Act, but save as aforesaid no authority in India outside a Province shall have any power to suspend, remit or commit the sentence of any person convicted in the province :

Provided that nothing in this sub-section affects any power of any officer of His Majesty's force to suspend, remit or commute a sentence passed by a Court-Martial.

(2) Nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General, if any, such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment.

73. Extent of executive power of the Union.— (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(*a*) to the matter with respect to which Parliament has power to make laws; and

(*b*) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty of agreement:

Provided that the executive power referred to in sub-clause (*a*) shall not, save as expressly provided in this Constitution, or in any made by Parliament, extend on any State[23] to matter with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in

this article, continue to exercise in matter with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Council of Ministers

74. Council of Ministers to aid and advise President.— (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

(2) The question whether any, and if so what, advice was tendered by Minister to the President shall not be inquired into in any court.

75. Other provisions as to Minister.— (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the Prime Minister.

(2) The Minister shall hold office during the pleasure of the President .

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the third schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the second schedule.

The Attorney-General for India

76. Attorney-General for India.— (1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to

discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

Conduct of Government Business

77. Conduct of business of the Government of India.—(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules,[24] to be made by the President, and the validity of an order or instruments which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) the President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

78. Duties of Prime Minister as respects the furnishing of information to the President, etc.—It shall be the duty of the Prime Minister—

(*a*) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposal for legislation;

(*b*) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(*c*) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

CHAPTER II.—PARLIAMENT

General

79. Constitution of Parliament.— There shall be a Parliament for the Union which shall consist of the President

and two Houses to be known respectively as the Council of States and the House of the People.

80. Composition of the Council of States.— (1) The Council of States shall consist of—

(*a*) twelve members to be nominated by the President in accordance with the provisions of clause (3); and

(*b*) not more than two hundred and thirty-eight representatives of the State [25][and of the Union territories].

(2) The allocation of seats in the Council of States to be filled by representatives of the States [25][and of Union territories} shall be in accordance with the provisions in that behalf contained in the fourth schedule.

(3) The members to be nominated by the President under sub-clause (*a*) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art and social service.

(4) The representatives of each State [26]* * * in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the [27][Union territories] in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

[28][**81. Composition of the House of the People.**— (1) Subject to the provisions of Article 331, the House of the People shall consist of—

(*a*) not more than five hundred members chosen by direct election from territorial constituencies in the States, and

(*b*) not more than [29][twenty-five members] to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of subclause (*a*) of clause (1),

(*a*) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(*b*) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

Note.— In its application to the State of Jammu and Kashmir in Article 81, for clauses (2) and (3), the following clause shall be *substituted*, namely:—

"(2) For the purposes of sub-clause (*a*) of clause (1),—

(*a*) there shall be allotted to the State six seats in the House of the People";

(*b*) the State shall be divided into single-member territorial constituencies by the Delimitation Commission constituted under the Delimitation Commission Act, 1962, in accordance with such procedure as the Commission may deem fit;

(*c*) the constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical feature, existing boundaries of administrative units, facilities of communication and public conveniences;

(*d*) the constituencies into which the State is divided shall not comprise the area under the occupation of Pakistan; and

(*e*) until the dissolution of the existing House of the People, the representatives of the State in that House shall be appointed by the President on the recommendation of the Legislature of the State." : Constitution (J & K) Order, 1954, Para 5 (*b*).

82. Readjustment after each census.— Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine;

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House.

83. Duration of Houses of Parliament.— (1) The Council of States shall not be subject to dissolution, but as nearly as

possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House;

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not exceeding in any case beyond a period of six months after the proclamation has ceased to operate.

84. Qualification for membership of Parliament.—A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

[30][(*a*) is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the third schedule;]

(*b*) is, in the case of a seat in the Council of States, not less than thirty years of age and in the case of a seat in the House of the People, not less that twenty-five years of age; and

(*c*) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

[31][**85. Sessions of Parliament, Prorogation and dissolution.**— (1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—

(*a*) prorogue the Houses or either House;

(*b*) dissolve the House of the People.]

86. Right of President to address and send messages to Houses.— (1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in

Parliament or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.

87. Special address by the President.—(1) At the commencement of [32][the first session after each general election to the House of the People and at the commencement of the first session of each year] the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address [33][***].

88. Rights of Ministers and Attorney General as respects Houses.— Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not be virtue of this article be entitled to vote.

Officers of Parliament

89. The Chairman and Deputy Chairman of the Council of States.— (1) The Vice-President of India shall be *ex officio* Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman there of and, so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

90. Vacation and resignation of, and removal from, the office of Deputy Chairman.— A member holding office as Deputy Chairman of the Council of States—

(*a*) shall vacate his office if he ceases to be a member of the Council;

(*b*) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(*c*) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days notice has been given of the intention to move the resolution.

91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.—(1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act Chairman.—

92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.— (1) At any sitting of the Council of States, while any resolution for the removal of Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of Article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, the Deputy Chairman, is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but, notwithstanding anything in Article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings.

93. The Speaker and Deputy Speaker of the House of the People.— The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose

another member to be Speaker or Deputy Speaker, as the case may be.

94. Vacation and resignation of and removal from, the offices of Speaker and Deputy Speaker.—A member holding office as Speaker or Deputy Speaker of the House of the People—

(*a*) shall vacate his office if he ceases to be a member of the House of the People;

(*b*) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(*c*) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House;

Provided that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.—

(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

96. The Speaker or the Deputy Speaker no to preside while a resolution for his removal from office is under consideration.— (1) At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Sepaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of Article

95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker, or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in Article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.— There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

98. Secretariat of Parliament:— (1) Each House of Parliament shall have a separate secretarial staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both House of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

99. Oath or affirmation by members.— Every member of either House of Parliament shall, before taking his seat, make and subscribe, before the President, or some person appointed

in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

100. Voting in House, power of Houses to act notwithstanding vacancies and quorum.— (1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

Disqualifications of Members

101. Vacation of seats.— (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State [34][***], and if a person is chosen a member both of Parliament and of a House of the Legislature of [35][a State], then, at the expiration of such period as may be specified in rules[36] made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament—

(*a*) become subject to any of the disqualifications mentioned in clause (1) of Article 102, or

(*b*) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

102. Disqualification for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(*a*) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent;

(*d*) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(*e*) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any state by reason only that he is a Minister either for the Union or for such State.

103. Decision on questions as to disqualifications of members.— (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

104. Penalty for sitting and voting before making oath or affirmation under Article 99 or when not qualified or when disqualified.— If a person sits or votes as member of either House of Parliament before he has complied with the requirements of Article 99, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

Powers, Privileges and Immunities of Parliament and its Members

105. Power, privileges, etc., of the House of Parliament and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the Houses of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceeding of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

Note.— The corresponding section of the Government of India Act, 1935, was:

"28. *Privileges and Chambers of members.*—(1) Subject to the provisions of this Act and to the rules, and standing orders regulating the procedure of the Federal Legislature, there shall

be freedom of speech in the Legislature, and no member of the Legislature, shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

(3) Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or office of the Legislature, the Status of the Court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a Court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the Chairman of the Committee so to do:

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been in the service of the Crown in India, and safeguarding confidential matter from disclosure, as my be made by the Governor-General exercising his individual judgment.

(5) The provisions of sub-section (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

106. Salaries and allowances of members.—Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined

by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India.

Legislative Procedure

107. Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of Articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of Articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reasons of the promulgation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the Houses of the People shall not lapse on a dissolution of the Houses of the People.

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall, subject to the provisions of Article 108, lapse on a dissolution of the House of the People.

108. Joint sitting of both Houses in certain cases.—(1) if after a Bill has been passed by one House and transmitted to the other House—

(*a*) the Bill is rejected by the other House; or

(*b*) the Houses have finally disagreed as to the amendments to be made in the Bill; or

(*c*) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it,

the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (*c*) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendment, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses;

Provided that at a joint sitting—

(*a*) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which cut originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(*b*) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matter with respect of which the Houses have not agreed;

and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

109. Special procedure in respect of Money Bills.—(1) Money Bill shall not be introduced in the Council of States.

(2) After a money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a perio

of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of the States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendation of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the forming which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

110. Definition of "Money Bills".— (1) For the purpose of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely :—

(*a*) the imposition, abolition, remission, alteration or regulation of any tax;

(*b*) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

(*c*) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;

(*d*) the appropriation of moneys out of the Consolidated Fund of India;

(*e*) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

(*f*) the receipt of money on account of the Consolidated Fund of India or the Public Account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

(*g*) Any matter incidental to any of the matters specified in subclauses (*a*) to (*f*).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licenses or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under Article 109, and when it is presented to the President for assent under Article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

111. Assent to Bills.— When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the president may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

Procedure in Financial Matters

112. Annual financial statement.— (1) The President shall in respect of every financial year cause to the laid before both the Houses of Parliament a statement of the estimated receipts

and expenditure of the Government of India for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(*a*) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and

(*b*) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India:—

(*a*) the emoluments and allowances of the President and other expenditure relating to his office;

(*b*) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of State and the Speaker and the Deputy Speaker of the House of the People;

(*c*) debt charges for which the Government of India is liable including interests, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(*d*) (*i*) the salaries, allowances and pensions payable to in respect of Judges of the Supreme Court,

(*ii*) the pensions payable to or in respect of Judges of the Federal Court,

(*iii*) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in [37][Governor's Province of the Dominion of India];

(*e*) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India;

(*f*) any sums required to satisfy any judgment, decree or award of any Court or arbitrary tribunal;

(*g*) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

113. Procedure in Parliament with respect to estimates.—(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be constructed as presenting the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

114. Appropriation Bills.— (1) As soon as may be after the grants under Article 113 have been made by the House of the People, there shall be introduce a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

(*a*) the grants so made by the House of the People; and

(*b*) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the presiding as to whether an amendment is inadmissible under this clause be final.

(3) Subject to the provisions of Articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provision of this article.

115. Supplementary, additional or excess grants.— (1) The President shall—

(*a*) if the amount authorise by any law made in accordance with the provisions of Article 114 to be expended for a

particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(*b*) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

(2) The provisions of Articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out the Consolidated Fund of India to meet such expenditure or grant.

116. Votes on account, votes of credit and exceptional grants.— (1) Notwithstanding anything in the foregoing provision of this Chapter, House of the People shall have power—

(*a*) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion the procedure prescribed in Article 113 for the voting of such grant and the passing of the law in accordance with the provisions of Article 114 in relation to that expenditure;

(*b*) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual finance statement;

(*c*) to make an exceptional grant which forms no part of the current service of any financial year,

and Parliament shall have power to authorise by law the withdrawal of money from the Consolidated Fund of India for the purposes for which the grants are made.

(2) The provisions of Articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.

117. Special provisions as to financial Bills.— (1) A Bill or amendment making provision for any of the matters specified in sub-clause (*a*) to (*f*) of clause (1) of Article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

Procedure Generally

118. Rules of procedure.— (1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation

to Parliament subject to such modification and adaptations as may be made therein by the chairman of the Council of States or the Speaker of the House of the people, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the people, may make rules as to the procedure with respect to joint sitting of, and communications between, the two House.

(4) At a joint sitting of the two House the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3), shall preside.

119. Regulation by law of procedure in Parliament in relation to financial business.— Parliament may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and, if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under clause (1) of Article 118 or with any or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.

120. Language to be used in Parliament.— (1) Notwithstanding anything in part XVII, but subject to the provisions of Article 348, business in Parliament shall be transacted in Hindi or in English:

Provided that the Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

121. Restriction on discussion in Parliament.— No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

Note.— The corresponding section of the Government of India Act 1935, was:

40. *Restrictions on discussion in the Legislature.*—(1) No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties.

In this sub-section the reference to a High Court shall be construed as including a reference to any Court in a Federated state which is a High Court for any of the purposes of Part IX of this Act.

(2) If the Governor-General in nis discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Federal Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, he may in his discretion direct that no proceedings, or no further proceeding, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

122. Courts not to inquire into proceedings of Parliament.— (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Note.— The corresponding section of the Government of India Act, 1935, was:

41. *Courts not to inquire into proceeding of the Legislature.*— (1) The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

CHAPTER IV.— THE UNION JUDICIARY

124. Establishment and constitution of Supreme Court.— (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that—

(*a*) a Judge may, by writing under his hand addressed to the President, resign his office;

(*b*) a Judge may be removed from his office in the manner provided in clause (4).

[(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.]

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(*a*) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(*b*) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(*c*) is, in the opinion of the President, a distinguished jurist.

Explanation.— In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session

for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President or some person appointed in the behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

125. Salaries, etc., of Judges.— (1) There shall be paid to the Judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

126. Appointment of acting Chief Justice.—When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

127. Appointment of *ad hoc* Judges.—(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned request in writing the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for

appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

128. Attendance of retired Judges at sittings of the Supreme Court.— Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court [38][or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court] to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

129. Supreme Court to be a court of record.— The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

130. Seat of Supreme Court.—The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

131. Original jurisdiction of the Supreme Court.— Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(*a*) between the Government of India and one or more States; or

(*b*) between the Government of India and any State or States on one side and one or more other States on the other; or

(*c*) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact on which the existence or extent of a legal right depends:

[39][Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.]

132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.—(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where the High Court has refused to give such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant a special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court, on any other ground.

Explanation.— For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.— (1) An appeal shall lie to the Supreme Court from any judgment. decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

(*a*) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand

rupees or such other sum as may be specified in that behalf by Parliament by law; or

(*b*) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(*c*) that the case is a fit one for appeal to the Supreme Court; and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (*c*), if the High Court further certifies that the appeal involves some substantial question of law.

(2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

134. Appellate jurisdiction of Supreme Court in regard to criminal matters.—(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

(*a*) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(*b*) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(*c*) certifies that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (*c*) shall lie subject to such provisions as may be made in that behalf under clause (1) of Article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a

High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Note.— In its application to the State of Jammu and Kashmir, in Article 134, cl. (2), after the words "Parliament may", the words "on the request of the Legislature of the State" shall be inserted. Constitution (J & K) Order, 1954, para 5 (*c*).

[40]**135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.**— Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of Article 133 or Article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

136. Special leave to appeal by the Supreme Court.— (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law or relating to the Armed Forces.

137. Review of judgments or orders by the Supreme Court.—Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

138. Enlargement of the jurisdiction of the Supreme Court.— (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

[41]**139. Conferment on the Supreme Court of powers to issue certain writs.**— Parliament may by law confer on the Supreme

Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of Article 32.

140. Ancillary powers of Supreme Court.— Parliament may by law law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desired for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

141. Law declared by Supreme Court to be binding on all courts.— The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Note.— The corresponding section of the Government of India Act, 1935, was:

212. *Law declared by Federal Court and Privy Council to be binding on courts.*—

The law declared by Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order[42] prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Note.— The corresponding section of the Government of India Act, 1935, was:

210. (1) All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court.

(2) The Federal Court shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the attendance of any person, the discovery of production of any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders, and any order of the Federal Court as to the costs of and incidental to any Proceedings therein, shall be enforceable by all courts and authorities in every part of British India, or of any Federated State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part.

(3) Nothing in this section—

(*a*) shall apply to any order with respect to costs as is mentioned in subsection (2) of the last preceding section; or

(*b*) shall, as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court.

143. Power of President to consult Supreme Court.—(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in [43][***] the proviso to Article 131 refer a dispute of the kind mentioned in the [44][said proviso] to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit report to the President its opinion thereon.

144. Civil and judicial authorities to act in aid of the Supreme Court.—All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

145. Rules of Court, etc.— (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

(*a*) rules as to the persons practising before the Court;

(*b*) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(*c*) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

(*d*) rules as to the entertainment of appeals under sub-clause (*c*) of clause (1) of Article 134;

(*e*) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;

(*f*) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(*g*) rules as to the granting of bail;

(*h*) rules as to stay of proceedings;

(*i*) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(*j*) rules as to the procedure for inquiries referred to in clause (1) of Article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judge who are to sit for the purpose deciding any case involving a substantial question of law as to the interpretation of this Constitution or the purpose of hearing any reference under Article 143 shall be five.

Provided that, where the Court hearing an appeal under any of the Provisions of this Chapter other than Article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a

substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court saved open Court, and no report shall be made under Article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and so such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

146. Officers and servants and the expenses of the Supreme Court.— (1) Appointment of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judge or officer of in Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

147. Interpretation.—In this Chapter and in Chapter V of Part VI references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

CHAPTER V.— COMPTROLLER AND AUDITOR-GENERAL OF INDIA

148. Comptroller and Auditor-General of India.— (1) There shall be a comptroller and Auditor General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule;

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the Conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

(6) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

149. Duties and powers of the Comptroller and Auditor-General.— The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

150. Power of Comptroller and Auditor-General to give directions as to accounts.— The accounts of the Union and of the States shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.

151. Audit reports.— (1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor [45][***] of the State who shall cause them to be laid before the Legislature of the State.

PART VI

THE STATES[46]

CHAPTER I. GENERAL

152. Definition.— In this Part, unless the context otherwise requires, the expression "State" [47][does not include the State of Jammu and Kashmir].

CHAPTER II.—THE EXECUTIVE

The Governor

[48]**153. Executive of State.**—There shall be a governor for each State: [49][Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States].

[48]**154. Executive power of States.**— (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with his Constitution.

(2) Nothing in this article shall—

(*a*) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(*b*) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

[48]**155. Appointment of Governor.**— The Governor of a State shall be appointed by the President by warrant under his hand and seal.

[50]**156. Term of office of Governor.**— (1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this Article, a Governor shall hold office for a term of five years from the date on which he enters upon his office;

Provided that a Governor shall, notwithstanding the expiration of his terms, continue to hold office until his successor enters upon his office.

[50]**157. Qualifications for appointment as Governor.**—No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

[50]**158. Conditions of Governor's office.**— (1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

[51][(3-A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the State in such proportion as the President may by order determine].

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

[52]**159. Oath or affirmation by the Governor.**—Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior-most Judge of that Court available, an oath or affirmation in the following form, that is to say—

"I, A.B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of .....(*name of the State*), and will to the best of may ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of ..... (*name of the State*)."

[52]**160. Discharge of the functions of the Governor in certain contingencies.**—The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

[53]**161. Power of Governor to grant pardons, etc. and to suspend, remit or commute sentences in certain cases.**— The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

[53]**162. Extent of executive power of State.**— Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to and limited by, the executive power, expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Council of Ministers

[54]**163. Council of Ministers to aid and advise Governor.**— (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under its Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

[55]**164. Other provisions as to Minister.**—(1) The Chief Minister shall be appointed by the Governor and the other

Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor;

Provided that in the State of Bihar, Madhya Pradesh and Orissa, there shall be Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Minister shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of that Legislature of the State shall at the expiration of the period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines shall be as specified in the Second Schedule.

The Advocate General for the State

[55]**165. Advocate General for the State.**—(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

Conduct of Government Business

[56]**166. Conduct of business of the Government of a State.**—(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instruments made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

[57]**167. Duties of Chief Minister as respects the furnishing of information of Governor, etc.**—It shall be the duty of the Chief Minister of each State—

(*a*) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(*b*) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(*c*) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

CHAPTER III—THE STATE LEGISLATURE

General

[57]**168. Constitution of Legislatures in States.**—(1) For every State there shall be a Legislature which shall consist of the Governor, and

(*a*) in the States of [58][Andhra Pradesh], Bihar, [59](***) [60][Madhya Pradesh], Madras, [61][Maharashtra], [62][Mysore], Punjab, [63][Uttar Pradesh] and West Bengal, two Houses;

(*b*) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly and where there is only one House, it shall be known as the Legislative Assembly.

[64]**169. Abolition or creation of Legislative Councils in States.**— (1)Notwithstanding anything in Article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

[64][**170.**[65] **Composition of the Legislative Assemblies.**— (1) Subject to the provisions of Article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(2) For the purpose of clause (11), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

Explanation.— In this clause, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be re-adjusted by such authority and in such manner Parliament may by law determine:

Provided that such re-adjustment shall not affect representation in the Legislative Assembly until the dissolution of the existing Assembly.]

Note.—Paragraph 2 of the Constitution (Removal of Difficulties) Order No. VIII, as amended by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Schedule I provides is as follows:—

For the period during which the tribal areas specified in Part B of the Table appended to Paragraph 20 of the Sixth Schedule to the Constitution or any parts thereof are administered by the President by virtue of sub-paragraph (2) of paragraph 18 of the said Schedule, the Constitution of India shall have effect subject to the following adaptation:—

In clause (2) of Article 170, after the words "throughout the State", the following words shall be *inserted*, namely:—

Provided that the constituencies into which the State of Assam is divided shall not comprise the tribal areas specified in Part B of the Table appended to Paragraph 20 of the Sixth Schedule."

[66]**171. Composition of the Legislative Councils.**—(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed [67][one-third] of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(*a*) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(*b*) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(*c*) as nearly as may be one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(*d*) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(*e*) the remainder shall be nominated by the Governor in accordance with the provisions of clause (3).

(4) The members to be elected under sub-clauses (*a*), (*b*) and (*c*) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, as the under the said sub-clauses and under sub-clause (*d*) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (*e*) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art, co-operative movement and social service.

[68]**172. Duration of State Legislatures.**—(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly;

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

[69]**173. Qualification for membership of the State Legislatures.**— A person shall not be qualified to be chosen to fill a seat in the Legislature of State unless he—

[70][(*a*) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;]

(*b*) is, in the case of a seat in the Legislative Assembly not less than twenty-five years of age, and in the case of a seat in the Legislative Council, not less than thirty years of age; and

(*c*) Possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

[69, 71][**174. Sessions of the State Legislature, propagation and dissolution.**— (1) The Governor shall from time to time the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—

(*a*) prorogue the House or either House;

(*b*) dissolve the Legislative Assembly.]

[72][**175. Right of Governor to address and send messages to the House or Houses.**— (1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.

[72][**176. Special address by the Governor.**—(1) At the commencement of [73][the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year], the Governor shall address the Legislative Assembly or, in the case of a state having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.[74](***)

[72]**177. Rights of Ministers and Advocate-General as respects the Houses.**— Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part

in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of the State Legislature

[75]**178. The Speaker and Deputy Speaker of the Legislative Assembly.**— Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

[75]**179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.**—A member holding office as Speaker or Deputy Speaker of an Assembly—

(*a*) shall vacate his office if he ceases to be a member of the Assembly;

(*b*) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(*c*) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:

Provided that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

[76]**180. Power of the Deputy Speaker or other person to perform the duties of, the office of, or to act as, Speaker.**—(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such

person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

[76]**181. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.**— (1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of Article 180 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in Article 189, be entitled to vote only in the first instances on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

[76]**182. The Chairman and Deputy Chairman of the Legislative Council.**— The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

[77]**183. Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.**—A member holding office as Chairman or Deputy Chairman of a Legislative Council—

(*a*) shall vacate his office if he ceases to be a member of the Council;

(*b*) may at any time by writing under his hand addressed, if such member is the Chairman to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and

(*c*) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

[78]**184. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.**—(1) While the office of Chairman is vacant the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman..

[79]**185. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.**— (1) At any sitting of the Legislative Council, while any resolution for the removal of the Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of Article 184 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in Article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

[79]**186. Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.**— There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made,

such salaries and allowances as are specified in the Second Schedule.

[79]**187. Secretariat of State Legislature.**—(1) The House or each House of the Legislature of a State shall have a separate secretarial staff:

Provided that nothing in this clause shall in the use of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment, and conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

[80]**188. Oath or affirmation by members.**—Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

[80]**189. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.**—(1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

The Speaker or Chairman, or person acting as such, shall not vote in the first instances, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof,

and any proceedings in the Legislature of a State shall be valid notwithstanding that is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

Disqualifications of Members

[81]**190. Vacation of seats.**— (1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules[82] made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

(3) If a member of a House of the Legislature of a State—

(*a*) becomes subject to any of the disqualifications mentioned in clause (1) of Article 191; or

(*b*) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

[83]**191. Disqualifications for membership.**— (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(*a*) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule other than an office declared by the Legislature of the State by law not to disqualify its holder;

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent;

(*d*) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(*e*) if he is so disqualified by or under any law made by Parliament.

(2) For the purpose of this article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

[84]**192. Decision on questions as to disqualifications of members.**— (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of Article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

[85]**193. Penalty for sitting and voting before making oath or affirmation under Article 188 or when not qualified or when disqualified.**—If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of Article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which

he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

Powers, Privileges and Immunities of State Legislatures and their Members

[85]**194. Powers, privileges, etc. of the Houses of Legislature and of the members and committees thereof.**—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of Clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

Note.—The corresponding section of the Government of India Act, 1935 was:

28. *Privileges Chamber of members.*—(1) Subject to the provisions of this Act and to the rules and standing order regulating the procedure of the Provincial Legislature, there shall be freedom of speech in every Legislature, and no member of the Legislature shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the provincial Legislature and until so defined, shall be such as were immediately before the commencement of this part of this Act enjoyed by members of the Legislative Council of the Province.

(3) Nothing in any existing Indian law, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering any Legislature to confer, confirm on a Chamber thereof or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of the Court, or any punitive disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a Court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the Chairman of a committee so to do:

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor-General exercising his individual judgment.

(5) The provisions of sub-section (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

[86]**195. Salaries and allowance of members.**— Members of the Legislative Assembly and the Legislative Council of State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province.

Legislative Procedure

[87]**196. Provisions as to introduction and passing of Bills.**— (1) Subject to the provisions of Articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

(2) Subject to the provisions of Articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reasons of the Prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a Dissolution of the Assembly.

[88]**197. Restriction on powers of Legislative Council as to Bills other than Money Bills.**— (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

(*a*) the Bill is rejected by the Council; or

(*b*) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(*c*) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

(*a*) the Bill is rejected by the Council; or
(*b*) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or
(*c*) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.

[89]**198. Special procedure in respect of Money Bills.**—(1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council, for its recommendations is not returned to the Legislative Assembly within the said period

of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

[90]**199. Definition of "Money Bills".**— (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(*a*) the imposition, abolition, remission, alteration or regulation of any tax;
(*b*) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
(*c*) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;
(*d*) the appropriation of moneys out of the Consolidated Fund of the State;
(*e*) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;
(*f*) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or
(*g*) any matter incidental to any of the matters specified in subclasses (*a*) to (*f*).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licenses or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under Article 198, and

when it is presented to the Governor for assent under Article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

[91]**200. Assent to Bills.**—When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be represented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President.

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President any which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

[92]**201. Bills reserved for consideration.**— When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to Article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

[93]**202. Annual financial statement.**—(1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement"

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(*a*) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State; and

(*b*) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure proposed to be made from the Consolidated Fund of the State—

(*a*) the emoluments and allowances of the Governor and other expenditure relating to his office;

(*b*) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;

(*c*) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt.

(*d*) expenditure in respect of the salaries and allowances of Judges of any High Court;

(*e*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(*f*) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.

[94]**203. Procedure in Legislature with respect to estimates.**—(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing

in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

[95]**204. Appropriation Bills.**—(1) As soon as may be after the grants under Article 203 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet—

(*a*) the grants so made by the Assembly; and

(*b*) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of Article 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.

[96]**205. Supplementary, additional or excess grants.**—(1) The Governor shall—

(*a*) if the amount authorised by any law made in accordance with the provisions of Article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that years or when a need has arisen during the current financial year for supplementary or additional expenditure upon some

new service not contemplated in the annual financial statement for that year, or

(*b*) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of the expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of Articles 202, 203 and 204 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditures or grant.

[97]**206. Votes on account, votes of credit and exceptional grants.**— (1) Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State shall have power—

(*a*) to make any grant in advance in respect of the estimated expenditure for a part of any financial years pending the completion of the procedure prescribed in Article 203 for the voting of such grant and the passing of the law in accordance with the provisions of Article 204 in relation to that expenditure;

(*b*) to make a grant for making an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(*c*) to make an exceptional grant which forms no part of the current service or any financial year;

and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State of the purposes for which the said grants are made.

(2) The provisions of Articles 203 and 204 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

[98]**207. Special provisions as to financial Bills.**—(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (*a*) to (*f*) of clause (1) of Article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

Procedure Generally

[99]**208. Rules of procedure.**—A house of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the

Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

[100]**209. Regulation by law of procedure in the Legislature of the State in relation to financial business.**—The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under clause (1) of Article 208 or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) or that article, such provisions shall prevail.

[100]**210. Language to be used in the Legislature.**—(1) Notwithstanding anything in Part XVII, but subject to the provisions of Article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English:

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

(2) Unless the Legislature of the State by law otherwise provides, this Article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

[100]**211. Restriction on discussion in the Legislature.**—No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

[101]**212. Courts not to inquire into proceedings of the Legislature.**— (1) The validity of any proceedings in the

Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

CHAPTER IV.—LEGISLATIVE POWER OF THE GOVERNOR

[102]**213. Power of Governor to promulgate Ordinances during recess of Legislature.**—(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances upper to him to require:

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—

(*a*) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(*b*) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(*c*) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance—

(*a*) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if before the expiration of that period a

resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(*b*) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the Purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void;

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the concurrent list, an Ordinance promulgated under this Article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

CHAPTER V.—THE HIGH COURT IN THE STATES

[103]**214. High Court for States.**—There shall be a High Court for each State.

[105] * * * * *

[103]**215. High Courts to be courts of record.**—Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

[103]**216. Constitution of High Courts.**—Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint:

[106] * * * * *

[103]**217. Appointment and conditions of the office of a Judge of a High Court.**—(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor

of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and [107][shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of [108][sixty-two years]:

Provided that—

(*a*) a Judge may, by writing under his hand addressed to the President, resign his office;

(*b*) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court;

(*c*) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(*a*) has for at least ten years held a judicial office in the territory of India; or

(*b*) has for at least ten years been an advocate of a High Court [109](**) or of two or more such Courts in succession.

Explanation.—For the purpose of this clause—

(*a*) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office after he became an advocate;

(*b*) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

[110][(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.]

218. Application of certain provisions relating to Supreme Court to High Courts.— The provisions of clauses (4) and (5) of Article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

[111]**219. Oath or affirmation by Judges of High Courts.**—Every person appointed to be a Judge of a High Court [112](**) shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

[113][**220. Restriction on practice after being a permanent Judge.**—No person who, after the commencement[114] of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

Explanation.—In this article the expression "High Court" does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement[115] of the Constitution (Seventh Amendment) Act, 1956.]

[116]**221. Salaries, etc. of Judges.**— (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

222. Transfer of a Judge from one High Court to another.—(1) The President may, after consultation with the Chief Justice of India transfer a Judge from one High Court to any other High Court [117](**).

[118][(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court be entitled to receive in addition to his salary such compensatory allowance as may be determined by

Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.]

Note.—In its application to the State of Jammu and Kashmir, *ibid* in Article 222, after clause (1) the following new clause shall be *inserted:*

(1-A) Every such transfer from the High Court of Jammu and Kashmir or to that High Court shall be made after 'consultation with the Governor."

[119]**223. Appointment of acting Chief Justice.**—When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

[120][**224. Appointment of additional and acting Judges.**—(1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President, may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of [121][sixty-two years].

[122][**224-A. Appointment of retired Judges at sittings of High Courts.**—Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and

privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.]

[123]**225. Jurisdiction of existing High Courts.**—Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature may by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

[124]**226. Power of High Courts to issue certain writs.**—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, the enforcement of any of the rights conferred by Part III and for any other purpose.

[125][(1-A) The power conferred by clause (1) to issue directions orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.]

(2) The power conferred on a High Court by [126][clause (1) or clause (1-A)] shall not be in derogation of the power conferrred on the Supreme Court by clause (2) of Article 32.

[127]**227. Power of superintendence over all courts by the High Court.**—(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(*a*) call for returns from such courts;

(*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(*c*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein.

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this Article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Note.—The corresponding section of the Government of India Act, 1935, was:

"224. *Administrative functions of High Courts.*—(1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

(*a*) call for returns;

(*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(*c*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(*d*) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision."

[128]**228. Transfer of certain cases to High Court.**—If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(*a*) either dispose of the case itself, or

(*b*) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

[129]**229. Officers and servants and the expenses of High Courts.**—(1) Appointment of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or office of the Court as he may direct:

Provided that the Governor of the State [130] (***) may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultations with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose.

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State [130](**).

(3) The administrative expenses of a High Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon

the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

[131][**230. Extension of jurisdiction of High Courts to Union territories.**—(1) Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to Union Territory,—

(*a*) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and

(*b*) the reference in Article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

[132]**231. Establishment of a common High Court for two or more states.**—(1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court,—

(*a*) the reference in Article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction;

(*b*) the reference in Article 217 to the Governor shall, in relation to any rules, forms or tables for subordinate courts be construed as a reference to the Governor of the State in which the subordinate courts are situate; and

(*c*) the references in Articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat:

Provided that if such principal seat is in a Union territory, the references in Articles 219 and 229 to the Governor, public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.

CHAPTER VI.—SUBORDINATE COURTS

[133]**233. Appointment of district Judges.**—(1) Appointment of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district Judge if he ~~has~~ been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

[134][**233-A. Validation of Appointment of, and judgments, etc., delivered by, certain district Judges.**—Notwithstanding any judgment, decree or order of any court,—

(*a*)(*i*) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district Judge in that State, and

(*ii*) no posting, promotion or transfer of any such person as a district Judge, made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of Article 233 or Article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions;

(*b*) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966, by, or before, any person appointed, posted, promoted or transferred as a district Judge in any State otherwise than in accordance with the provisions of Article 233 or Article 235 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions.]

[135]**234. Recruitment of persons other than district Judges to the judicial service.**—Appointment of person other than district Judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

[135]**235. Control over subordinate courts.**—The control over district courts and courts subordinate there to including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district Judge shall be vested in the High Court, but nothing in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

[136]**236. Interpretation.**—In this Chapter—

(*a*) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(*b*) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

[133]**237. Application of the provisions of this Chapter to certain class or classes of magistrates.**—The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made there-under shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

PART VII

The States in Part B of the First Schedule, Rep. by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Schedule.

PART VIII[137]

[138][THE UNION TERRITORIES]

[139]**239. Administration of Union territories.**—(1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the Administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

[140][**239-A Creation of local Legislatures or Council of Ministers or both for certain Union territories.**— (1) Parliament may by law create for any of the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Pondicherry—

(*a*) a body, whether selected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(*b*) a Council of Ministers,

or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of Article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.]

240. Power of President to make regulations for certain Union territories.— (1) The President may make regulations for the peace, progress and good government of the Union territory of—

(*a*) the Andaman and Nicobar Islands;

(*b*) the Laccadive, Minicoy and Amindivi Islands;

[141][(*c*) Dadra and Nagar Haveli;]

[142][(*d*) Goa, Daman and Diu;]

[143][(*e*) Pondicherry:]

[144][Provided that when any body is created under Article 239-A to function as a Legislature for the Union territory of Goa, Daman and Diu or Pondicherry, the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature.]

(2) Any regulation so made may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory.

241. High Courts for Union territories.—(1) Parliament may by law constitute a High Court for a [145][Union territory] or declare any court in any [146][such territory] to be a High Court for all or any of the purposes of this Constitution.

(2) The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as apply in relation to a High Court referred to in Article 214 subject to such modifications or exceptions as Parliament may by law provide.

[147][(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, in relation to any Union territory shall continue to exercise such jurisdiction in relation to that territory after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court for a State to, or from, any Union territory or part thereof.]

242. *Coorg. Rep. by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Schedule.*

PART IX

The territories in Part D of the First Schedule and other territories not specified in that Schedule. Rep. by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Schedule.

PART X[148]

THE SCHEDULED AND TRIBAL AREAS

244. Administration of Scheduled Areas and Tribal Areas.— (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State [149](**) other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam.

PART XI

RELATIONS BETWEEN THE UNION AND THE STATES

CHAPTER I.—LEGISLATIVE RELATIONS

Distribution of Legislative Powers

245. Extent of laws made by Parliament and by the Legislatures of States.— (1) Subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Note.— Corresponding section of the Government of India Act, 1935, was :—

"99. *Extent of Federal and Provincial laws.*—(1) Subject to the provisions of this Act, the Federal Legislature may make laws for the Whole or any part of British India or for any Federated State, and a provincial Legislature may make laws for the Province or for any part thereof.

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, no Federal law shall,

on the ground that it would have extra-territorial operation, be deemed to be invalid in so far as it applies—

(*a*) to British subjects and servants of the Crown in any part of India; or

(*b*) to British subjects who are domiciled in any part of India wherever they may be; or

(*c*) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or

(*d*) in the case of a law with respect to a matter accepted in the Instrument of Accession of Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

(*e*) in the case of a law for the regulation or discipline of a naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be."

[150]**246. Subject-matter of laws made by Parliament and by the Legislatures of States.**—(1) Notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clauses (3) Parliament, and, subject to clause (1), the Legislature of any State [151](**) also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject of clauses (1) and (2), the Legislature of any State [151](**) has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [152][in a State] notwithstanding that such matter is a matter enumerated in the State List.

Note.—the corresponding section of the Government of India Act, 1935, was

"100. *Subject-matter of Federal and Provincial law.*—(1) Notwithstanding anything in the two next succeeding sub-sections, the Federal Legislature has and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the 'Federal Legislative List').

(2) Notwithstanding anything in the next succeeding sub-section. the Federal Legislature, and, subject to the preceding sub-section, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the 'Concurrent Legislative List').

(3) Subject to the two preceding subsections the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the 'Provincial Legislative List').

(4) the Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof".

247. Power of Parliament to provide for the establishment of certain additional courts.—Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

[153]**248. Residuary powers of legislation.**—(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

[153]**249. Power of Parliament to legislate with respect to a matter in the State List in the national interest.**—(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State Lists specified in the resolution, it shall be lawful for Parliament to make laws for the whole or

any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein:

Provided that, if and so often as resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or committed to be done before the expiration of the said period.

Note.— The corresponding section of the Government of India Act, 1935, was :

"104. *Residual powers of Legislation.*—(1) The Governor General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion."

250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.— (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law may by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease

to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Note.—In its application to the State of Jammu and Kashmir, in Article 250, for the words 'to any of the matters enumerated in the State List' the words "also to matters not enumerated in the Union List", shall be *substituted* : *ibid.*

251. Inconsistency between laws made by Parliament under Articles 249 and 250 and laws made by the Legislatures of States.— Nothing in Articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

Note.—In its application to the State of Jammu & Kashmir, in Article 251, for the word and figures, "articles 249 and 250", the word and figures "article 250" shall be substituted, and the words "under this Constitution" shall be omitted; and, for the words "under either of the said articles", the words "under the said article" shall be substituted:

Note.— The corresponding section of the Government of India Act, 1935, was:

"102 *Power of Federal Legislature to legislate if an emergency is proclaimed.*—(1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a 'Proclamation of Emergency') that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List or to make laws, whether or not, for a Province or any part

thereof, with respect to any matter not enumerated in any of the lists in the Seventh Schedule to this Act:

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal Law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnance, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of emergency—

(*a*) may be revoked by a subsequent Proclamation;

(*b*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and

(*c*) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolution of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respect things done or omitted to be done before the expiration of the said period.

(5) A Proclamation of Emergency declaring that the security of India is threatened by war or internal disturbance may be made before the actual occurrence of war or of any such disturbance of the Governor-General in his discretion is satisfied that there is imminent danger thereof."

252. Power of Parliament to legislate for two or more, States by consent and adoption of such legislation by any other State.— (1) If it appears to the Legislatures of two or more States

to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act as passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respect any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

253. Legislation for giving effect to international agreements.— Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Note.—In its application to the State of Jammu and Kashmir, to Article 253, the following proviso shall be added:—

"Provided that after the commencement of the Constitution (Application to Jammu & Kashmir) Order, 1954, no decision affecting the disposition of the State of Jammu and Kashmir shall be made by the Government of India without the consent of the Government of that State": *ibid*.

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or, after the law made, by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Note.—The corresponding section of the Government of India Act, 1935, was:

"107. *Inconsistency between Federal laws and Provincial or State.*—(1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, the subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnance, be void."

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure has received the assent of the Governor-General or of His Majesty's the Provincial law shall in the Province prevail, but nevertheless the Federal Legislature may at any time exact further legislation with respect to the same matter:

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail and the law of the State shall, to the extent of the repugnance be void.

(2) Where a law made by the Legislature of a State [154](**) with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to amending, varying or repealing the law so made by the Legislature of the State.

[155]**255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.**—No Act of Parliament or of the Legislature of a State [156](**), and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given—

(*a*) where the recommendation required was that of the Governor, either by the Governor or by the President:

(*b*) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President:

(*c*) where the recommendation or previous sanction required was that of the President, by the President.

Note.— Article 255 shall not apply to the State of Jammu and Kashmir; Constitution (J & K) Order, 1954, para 6.

CHAPTER II. — ADMINISTRATIVE RELATIONS

General

[156]**256. Obligation of States and the Union.**—The executive power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

Note.—In its application to the State of Jammu and Kashmir, Article 256 shall be renumbered as clause (1) of that article and the following new clause shall be added thereto:—

"(2) The State of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution in relation to that State; and in particular, the said State shall, if so required by the Union, acquire or requisition property on behalf and at the expense of the Union, or if the property belongs to the State, transfer it to the Union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator

appointed by the Chief Justice of India." Constitution (J & K) Order, 1954, para 6.

257. Control of the Union over States in certain cases.—(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken of the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

258. Power of the Union to confer powers, etc., on States in certain cases.—(1) Notwithstanding anything in this constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of power and the imposition of duties, upon the State of officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

[157][**258A. Power of the States to entrust functions to the Union.**— Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that government or to its officers functions in relation to any matter to which the executive power of the State extends.]

259. *Armed Forces in States in Part B of the First Schedule. Rep. by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.*

260. Jurisdiction of the Union in relation to territories outside India.—The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive legislative or judicial functions vested in the government of such territory, but every such agreement shall be subject to, and government by, any law relating to the exercise of foreign jurisdiction for the time being in force.

261. Public acts, records and judicial proceedings.—(1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be provoked and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

Note.— In its application to the State of Jammu and Kashmir, in clause (2) of Article 261, the words "made by Parliament" shall be omitted. Constitution (J &K) Order, 1954.

Disputes relating to Waters.

262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.—(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Co-ordination between States

263. Provision with respect to an inter-State Council.—If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

(*a*) inquiring into and advising upon disputes which may have arisen between States;

(*b*) investigating and discussing subjects in which some or all of the States, or the Union an done or more of the States, have a common interest; or

(*c*) Making recommendation upon any such subject and, in particular recommendations for the better co-ordination of policy and action with respect to that subject;

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.

PART XII

FINANCE, PROPERTY, CONTRACTS AND SUITS

CHAPTER I.—FINANCE

General

[**264. Interpretation.**— In this Part, "Finance Commission" means a Finance Commission constituted under Article 280.

Note.— *Subs.* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch. for "In this Part, unless the context otherwise requires,—

(*a*) 'Finance Commission' means a Finance Commission constituted under Article 280.

(*b*) 'State' does not include a State specified in Part C of the First Schedule;

(*c*) References to State specified in Part C of the First Schedule shall include references to any territory specified in Part D of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule."

265. Taxes not to be imposed save by authority of law.— No tax shall be levied or collected except by authority of law.

266. Consolidated Funds and public accounts of India and of the States.—(1) Subject to the provisions of Article 267 and to the provision of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled"the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purpose and in the manner provided in this Constitution.

Note.— In its application to the State of Jammu and Kashmir, in Article 266, reference to the State or States shall be construed

as not including references to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, para 7.

267 Contingency Fund.—(1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under Article 115 or Article 116.

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor [158](**) of the State to enable advances to the made by him out of such fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under Article 205 or Article 206.

Note.— This clause shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954.

Distribution of Revenues between the Union and the States

268. Duties levied by the Union but collected and appropriated by the States.—(1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

(*a*) in the case where such duties are leviable within any [159]Union territory, by the Government of India, and

(*b*) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

262. Taxes levied and collected by the Union but assigned to the States.—(1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clauses (2) namely:—

(*a*) duties in respect of succession to property other than agricultural land;
(*b*) estate duty in respect of property other than agricultural land;
(*c*) terminal taxes on goods or passengers carried by railway, sea or air;
(*d*) taxes on railway fares and freights;
(*e*) taxes other than stamp duties on transactions in stock-exchanges and futures markets;
(*f*) taxes on the sale or purchase of newspapers and on advertisements published therein;
[161][(*g*) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.]

(2) The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to [159][Union territories], shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

[160][(3) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.]

270. Taxes levied and collected by the Union and distributed between the Union and the States.— (1) Taxes on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to [161][Union territories] or to taxes payable in respect of Union emoluments, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed.

(3) For the purposes of clause (2), in each financial year such percentage as may be prescribed of so much of the net proceeds

of taxes on income as does not be present the net proceeds of taxes payable in respect of Union emoluments shall be deemed to represent proceeds attributable to [162][Union territories].

(4) In this article—

(*a*) "taxes on income" does not include a corporations tax;

(*b*) "prescribed" means—

(*i*) until a finance Commission has been constituted, prescribed by the President by order, and

(*ii*) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission;

(*c*) "Union emoluments" includes all emoluments and pensions payable out of the Consolidated Fund of India in respect of which income-tax is chargeable.

271. Surcharge on certain duties and taxes for purpose of the Union.— Notwithstanding anything in Articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

272. Taxes which are levied and collected by the Union and may be distributed between the Union and the States.— Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the Consolidated Fund of India to the States to which the law imposing the duty extends sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among those States in accordance with such principles of distribution as may be formulated by such law.

273. Grants in lieu of export duty on jute and jute products.— (1) there shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States, such sums as may be prescribed.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute products continued to be levied by the Government of India

or until the expiration of ten years from the commencement of this Constitution whichever is earlier.

(3) In this article, the expression "prescribed" has the same meaning as in Article 270.

Note.— Article 273 shall not apply to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, para 7.

274. Prior recommendation of President required to Bills affecting taxation in which States are interested.— (1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article, the expression "tax or duty in which States are interested" means—

(*a*) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or

(*b*) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.

275. Grants from the Union to certain States.— (1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

(*a*) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part A of the table appended to paragraph 20 of the Sixth Schedule; and

(*b*) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament.

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendation of the Finance Commission.

276. Taxes on professions, trades, callings and employments.— (1) Notwithstanding anything in Article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum:

Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty

rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

277. Savings.— Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

Note.—In its application to the State of Jammu and Kashmir, in Article 277, references to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, i.e., the 14th May, 1954.

278. *Agreement with States in Part B of the First Schedule with regard to certain Financial matters. Rep. by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.*

279. Calculation of "net proceeds", etc.—(1) In the foregoing provisions of this Chapter, "net proceeds" mean in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provisions of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, may be, assigned to any State, provide

for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

280. Finance Commission.—(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

(*a*) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(*b*) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India ;

[164]* * * * *

[165](*c*) any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

281. Recommendations of the Finance Commission.—The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Miscellaneous Financial Provisions

282. Expenditure defrayable by the Union or a State out of its revenues.—The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not

one with respect to which Parliament or the Legislature of the State, as the case may make laws.

Note.—In its application to the State of Jammu and Kashmir, in Article 282, references to the State shall be construed as not including references to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para. 7.

283. Custody, etc. of Consolidated Funds, Contingency Funds and money credited to the public accounts.—(1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

[165](2) The custody of the Consolidated Fund of a State and the Contingency Fund of a state, the payment of moneys into such funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such funds received by or on behalf of the Government of the State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made by the Governor [166]* * * of the State.

284. Custody of suitors' deposits and other moneys received by public servants and courts.—All money received by on deposited with—

(*a*) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be, or

(*b*) any court within the territory of India to the credit of any cause, matter, account or persons,

shall be paid into the public account of India or the public account of the State, as the case may be.

Note.—In its application to the State of Jammu and Kashmir, in Article 284, references to the State shall be construed as not including references to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para. 7.

285. Exemption of property of the Union from State taxation.—(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

Note.— The corresponding section of the Government of India Act, 1935, was:—

"154. *Exemption of certain public property from taxation.*— Property vested in His Majesty for purposes of the Government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or any authority within, a Province or Federated State:

Provided until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable thereto."

286. Restrictions as to imposition of tax on the sale or purchase of goods.— (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(*a*) outside the State; or

(*b*) in the course of the import of the goods into, or export of the goods out of, the territory of India.

[167]* * * * *

[168][(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.]

287. Exemption from taxes on electricity.— Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is—

(*a*) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or

(*b*) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway,

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

288. Exemption from taxation by States in respect of water or electricity in certain cases.— (1) Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation.— The expression "law of a State in force" in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously

repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.

289. Exemption of property and income of a State from Union taxation.— (1) The property and income of a State shall be exempt from Union taxation.

(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection herewith.

(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government.

Note.— The corresponding section of the Government of India Act, 1935, was :—

Provided that—

(*a*) where a trade or business of any kind is carried on by or on behalf of the Government of a Province in any part of British India outside that Province or by a Ruler in any part of British India, nothing in this sub-section shall exempt that Government or Ruler from any Federal taxation in respect of that trade or business, or any operation connected therewith, or any income arising in connection therewith, or any property occupied for the purposes thereof;

(*b*) nothing in this sub-section shall exempt a Ruler from any Federal taxation in respect of any lands, buildings

or income being his personal property or personal income.

(2) Nothing in this Act affects any exemption from taxation enjoyed as of right at the passing of this Act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date."

290. Adjustment in respect of certain expenses and pensions.— Where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then, if—

(*a*) in the case of a charge on the Consolidated Fund of India, the Court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State; or

(*b*) in the case of a charge on the Consolidated Fund of a State, the court or Commission serves any of the separate needs of the Union or another State, or the person has served wholly or in part in connection with the affairs of the Union or another State,

there shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

Note.— Article 290 shall not apply to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954 Para, 7.

[169][**290-A. Annual payment to certain Devaswom Funds.**— A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of the Consolidated Fund of the State of Madras every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories

transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin].

291. Privy purse sums of Rulers.— [170]***Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse—

(*a*) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and

(*b*) the sums so paid to any Ruler shall be exempt from all taxes on income.

[171]* * * * *

Note.— Article 291 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 7.

CHAPTER II.— BORROWING

292. Borrowing by the Government of India.— The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

293. Borrowing by States.— (1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under Article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.

(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of

India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

CHAPTER III.— PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS

294. Succession to property, assets, rights, liabilities and obligations in certain cases.— As from the commencement of this Constitution—

(*a*) all property and assets which immediately before such commencement were vested in his Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and

(*b*) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

295. Succession to property, assets, rights, liabilities and obligations in other cases.— (1) As from the commencement of this Constitution—

(*a*) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes

of the Union relating to any of the matters enumerated in the Union List, and

(*b*) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1).

Note.— In its application to the State of Jammu and Kashmir, in Article 295, as references to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, i.e., the 14th May, 1954.

296. Property accruing by escheat or lapse, or as *bona vacantia*.— Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union:

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held

were purposes of the Union or of a State, vest in the Union or in that State.

Explanation.— In this article, the expressions "Ruler" and "Indian State" have the same meanings as in Article 363.

297. Things of value lying within territorial waters or continental shelf to vest in the Union.— All lands, minerals and other things of value underlying the ocean within the territorial waters [172] [or the continental shelf] of India shall vest in the Union and be held for the purposes of the Union.

[173][**298. Power to carry on trade, etc.**— The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that—

(*a*) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(*b*) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.]

Note.— In its application to the State of Jammu and Kashmir, in Article 298, references to the State shall be construed as not including references to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para 7.

299. Contracts.— (1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor [174]* * * of the State, as the case may be and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor [174]* * * by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor [175]* * * shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force nor shall any person making or executing

any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Note.— In its application to the State of Jammu and Kashmir, in Article 299, references to the State shall be construed as not including references to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 7.

300. Suits and Proceedings.— (1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution—

(*a*) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings, and

(*b*) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

Note.— In its application to the State of Jammu and Kashmir, in Article 300 references to the State or States be construed as not including reference to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para 7.

The corresponding section of the Government of India Act, 1935, was—

"176. *Suits and Proceedings.*— (1) The Federation may sue and be sued by the name of the Federation of India and a Provincial Government may sue and be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in

the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.

(2) Rules of Court may provide that, where the Federation, the Federal Railway Authority, or a Province sue or are sued in the United Kingdom, service of all proceedings may be effected upon the High Commissioner for India or such other representative in the United Kingdom of the Federation, Authority or Province, as may be specified in the rules."

PART XIII

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

301. Freedom of trade, commerce and intercourse.— Subject to the other provisions of this Part, trade, commerce, and intercourse throughout the territory of India shall be free.

302. Power of Parliament to impose restrictions on trade, commerce and intercourse.— Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.— (1) Notwithstanding anything in Article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Note.— In its application to the State of Jammu and Kashmir, in cl. (1) of Article 303, the words "by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule'; shall be *omitted, ibid* Para 8.

304. Restrictions on trade, commerce and intercourse among States.— Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law—

(*a*) impose on goods imported from other States [176][or the Union territories] any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(*b*) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (*b*) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

Note.— The corresponding section of the Government of India Act, 1935, was—

"297. *Prohibition of certain restrictions on internal trade.*— (1) No Provincial Legislature or Government shall—

(*a*) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in the list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of any class or description; or

(*b*) by virtue of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured, or produced in the Province and similar goods not so manufactured or produced discriminates in favour of the former, or which, in the case of goods manufactured or produced outside that Province, discriminates between goods manufactured or produced in another locality.

(2) Any law passed in contravention of this section shall, to the extent of the contravention, be invalid."

[177][**305. Saving of existing laws and laws providing for State monopolies.**— Nothing in Article 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in Article 301 shall affect the operation of any law made before the commencement

of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (*ii*) of clause (6) of Article 19].

[178]**306.**

307. Appointment of authority for carrying out the purposes of Articles 301 to 304.— Parliament may by law appoint such authority as it considered appropriate for carrying out the purposes of Articles 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary.

PART XIV

SERVICES UNDER THE UNION AND THE STATES

CHAPTER I.—SERVICES

308. Interpretation.— In this Part, unless the context otherwise requires, the expression "State" [179][does not include the State of Jammu and Kashmir].

309. Recruitment and conditions of service of persons serving the Union or a State.— Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor [180]*** of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

Note:— The corresponding section of the Government of India Act, 1935, was—

"241. *Recruitment and conditions of service.*— (1) Except as expressly provided by this Act, appointments to the civil services of, and civil posts under the Crown in India, shall, after the commencement of Part III of this Act, be made—

(*a*) in the case of services of the Federation, and posts in connection with the affairs of the Federation, by the Governor-General or such person as he may direct;

(*b*) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

(2) Except as expressly provided by this Act, the condition of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be subject as may be prescribed—

(*a*) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose;

(*b*) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose:

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this sub-section shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule making authority to be a matter not suitable for regulating by rule in the case of that class.

(3) The said rule shall be so framed as to secure—

(*a*) that, in the case of a person who before the commencement of Part III of this Act, was serving His Majesty, in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of

March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give direction in that respect;

(*b*) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

(*i*) punishes or formally censures him; or

(*ii*) alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or

(*iii*) terminates his appointment otherwise than upon his reaching the age fixed for super-annuation,

as he would have had immediately before the commencement of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect;

(*c*) that every other person serving His Majesty in a Civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor.

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the condition of service of persons serving His Majesty in a civil capacity in India and any rules made under this section shall have effect subject to the provisions of any such Act:

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding sub-section.

(5) No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable:

Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act."

310. Tenure of office of persons serving the Union or a State.—

(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a Civil Service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor [181]*** of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be of the Governor [182]*** of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor [183]***, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Note.— The corresponding section of the Government of India Act, 1935, was—

"240. *Tenure of office of persons employed in civil capacities in India.*— (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this sub-section shall not apply—

(*a*) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(*b*) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practical to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post."

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.— (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

[184](2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such enquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such enquiry:

Provided that this clause shall not apply—

(*a*) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(*b*) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or

(*c*) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

312. All-India services.— (1) Notwithstanding anything in Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may be law provide for the creation of one or more all-India services common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

Note.— In its application to the State of Jammu and Kashmir, in Article 312, after the words "the States", the brackets and words "(including the State of Jammu and Kashmir)" shall be *inserted*. Constitution (J & K) Order, 1954, Para 9.

313. Transitional provisions.— Until other provisions is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

314. Provision for protection of existing officers of certain services.— Except as otherwise expressly provided by this Constitution, every person who having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects

disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement.

CHAPTER II.— PUBLIC SERVICE COMMISSIONS

315. Public Service Commissions for the Union and for the States.— (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The Public Service Commission for the Union, if requested so to do by the Governor [185]* * * of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

316. Appointment and term of office of members.— (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor [185]* * * of the State:

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period

of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

[186][(1-A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under clause (1) to be vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose].

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of the sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier:

Provided that—

(*a*) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor [187]* * * of the State, resign his office;

(*b*) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of Article 317.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

317. Removal and suspension of a member of a Public Service Commission.— (1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on enquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or

such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor [187]* * *, in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order removed from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be—

(*a*) is adjudged an insolvent; or

(*b*) engages during his term of office in any paid employment outside the duties of his office; or

(*c*) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour.

318. Power to make regulations as to conditions of service of members and staff of the Commission.— In the case of the Union Commission or a Joint Commission the President and, in the case of a State Commission, the Governor [188]* * * of the State may by regulations—

(*a*) determine the number of members of the Commission and their conditions of service; and

(*b*) make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members.— On ceasing to hold office—

(*a*) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under Government of India or under the Government of a State;

(*b*) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(*c*) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(*d*) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

320. Functions of Public Service Commissions.— (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(*a*) on all matters relating to methods of recruitment to civil services and for civil posts;

(*b*) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(*c*) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(*d*) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(*e*) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it should be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor [189]* * of the State, may refer to them:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor [190]* * *, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as respects the manner in which effect may be given to the provisions of Article 335.

(5) All regulations made under the proviso to clause (3) by the President or the Governor [191]* * * of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

321. Power to extend functions of Public Service Commissions.— An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

322. Expenses of Public Service Commissions.— The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

323. Reports of Public Service Commissions.— (1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor [192]* * * of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor [192]* * *

of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor [194]* *, shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

PART XV

ELECTIONS

324. Superintendence, direction and control of elections to be vested in an Election Commission.— (1) The Superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution [194]* * * shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may be rule determine :

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor [195]* * * of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

Note.— In clause (1) of Article 324, the reference to the Constitution shall, in relation to elections to either House of the Legislature of Jammu and Kashmir, be *construed* as a reference to the Constitution of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para 10.

325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, racd, caste or sex.— There shall be one general electoral roll for evdry territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

Note.— In its application to the State of Jammu and Kashmir, in Article 325, the reference to a State shall be *construed* as not including a reference to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para 10.

326. Elections to the House of the people and to the Legislative Assemblies of States to be on the basis of adult suffrage.— The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult

suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Note.— In its application to the State of Jammu and Kashmir, in Articles 326 and 327, the reference to a State shall be construed as not including a reference to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954.

327. Power of Parliament to make provision with respect to elections to Legislatures.— Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

Note.— In its application to the State of Jammu and Kashmir, in Articles 326 and 327, the reference to a State shall be construed as not including a reference to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954.

[196]**328. Power of Legislature of a State to make provision with respect to elections to such Legislature.**— Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

329. Bar to interference by courts in electoral matters.— Notwithstanding anything in this Constitution—

(*a*) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under

Article 327 or Article 328, shall not be called in question in any court;

(*b*) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Note.— In its application to the State of Jammu and Kashmir, in Article 329, the reference to a State shall be *construed* as not including a reference to the State of Jammu and Kashmir and the words and figures "or Article 328" shall be *omitted:* Constitution (J & K) Order, 1954.

PART XVI

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.— (1) Seats shall be reserved in the House of the People for—

(*a*) the Scheduled Castes;

(*b*) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam; and

(*c*) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State [197][or Union territory] for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State [197][or Union territory] in the House of the People as the population of the Scheduled Castes in the State [197][or Union territory] or of the Scheduled Tribes in the State [198][or Union territory] or part of the State [198][or Union territory], as the case may be, in respect of which seats are so reserved, bears to the total population of the State [198][or Union territory].

Note.— In its application to the State of Jammu and Kashmir, in Article 330, references to the "Scheduled Tribes" shall be *omitted*: Constitution (J & K) Order, 1954.

[199]**331. Representation of the Anglo-Indian community in the House of the People.**— Notwithstanding anything in Article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

[199]**332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.**— (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State [200]* * *.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legilsative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality of Shillong.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.

333. Representation of the Anglo-Indian community in the Legislative Assemblies of the States.— Notwithstanding anything in Article 170, the Governor [201]* * * of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is

not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate.

Note.— Article 333 shall not apply to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para 11.

334. Reservation of seats and special representation to cease after twenty years.— Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to—

(*a*) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and

(*b*) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination,

shall cease to have effect on the expiration of a period of [202][twenty years] from the commencement of this Constitution:

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

Note.— In its application to the State of Jammu and Kashmir, in Article 334, references to the State or the States shall be construed as not including references to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para 11.

335. Claims of Scheduled Castes and Scheduled Tribes to services and posts.— The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

Note.— In its application to the State of Jammu and Kashmir, in Article 335, references to the State shall be construed as not including references to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para 11.

[203]**336. Special provision for Anglo-Indian community in certain services.**— (1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs,

postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years:

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

[203]**337. Special provision with respect to educational grants for the benefit of Anglo-Indian community.**— During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State [204]* * * for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years:

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

338. Special Officer for Scheduled Castes, Scheduled Tribes, etc.— (1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of Article 340, by order specify and also to the Anglo-Indian community.

339. Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes.— (1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States [205]* * *.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to [206][a State] as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

Note.— Article 339 shall not apply to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para 11.

340. Appointment of a Commission to investigate the Conditions of backward classes.— (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and conditions subject to which such grants should be made, and the order appointing

such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

341. Scheduled Castes.— (1) The President [207][may with respect to any State [208][or Union territory], and where it is a State [209]* * *, after consultation with the Governor [210]* * * thereof], by public notification[211], specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Caste, in relation to that State [212][or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

[213]**342. Scheduled Tribes.**— The President [214][may with respect to any State [212][or Union territory], and where it is a State [215]* * *, after consultation with the Governor [216]* * * thereof], by public notification[217], specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [218][or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

PART XVII

OFFICIAL LANGUAGE

Note.— "The provisions of this Part shall apply to the State of Jammu and Kashmir only in so far as they relate to—

(*i*) the official language of the Union;

(*ii*) the official language for communication between one State and another, or between a State and the Union; and

(*iii*) the language of the proceedings in the Supreme Court: Constitution (J & K) Order, 1954, Para 12.

CHAPTER I—LANGUAGE OF THE UNION

343. Official language of the Union.— (1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of—

(*a*) the English language, or

(*b*) the Devanagari form of numerals,

for such purposes as may be specified in the law.

344. Commission and Committee of Parliament on official language.— (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages

specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to—

(*a*) the progressive use of the Hindi language for the official purposes of the Union;

(*b*) restrictions on the use of the English language for all or any of the official purposes of the Union;

(*c*) the language to be used for all or any of the purposes mentioned in Article 348;

(*d*) the form of numerals to be used for any one or more specified purposes of the Union;

(*e*) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.

(3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

(4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon.

(6) Notwithstanding anything in Article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report.

CHAPTER II—REGIONAL LANGUAGES

345. Official language or languages of a State.— Subject to the provisions of Article 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

346. Official language for communication between one State and another or between a State and the Union.— The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another state and between a State and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

347. Special provision relating to language spoken by a section of the population of a State.— On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III—LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC.

348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.— (1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides—

(*a*) all proceedings in the Supreme Court and in every High Court,

(*b*) the authoritative texts—

(*i*) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(*ii*) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor [219]* * * of a State, and

(*iii*) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

(2) Notwithstanding anything in sub-clause (*a*) of clause (1), the Governor [219]* * * of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State:

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

(3) Notwithstanding anything in sub-clause (*b*) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor [219]* * * of the State or in any order, rule, regulation or bye-law referred to in paragraph (*iii*) of that sub-clause, a translation of the same in the English language published under the authority of the Governor [220]* * * of the State in the Official Gazette of that State shall be deemed to be the authoritative texts thereof in the English language under this article.

349. Special procedure for enactment of certain laws relating to language.— During the period of fifteen years from the commencement of this Constitution; no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of Article 348 shall be introduced or moved in either the President, and the President shall not give his House of Parliament without the previous sanction of sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission

constituted under clause (1) of Article 344 and the report of the Committee constituted under clause (4) of that article.

CHAPTER IV—SPECIAL DIRECTIVES

350. Language to be used in representations for redress of grievances.— Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State as the case may be.

[221][**350-A. Facilities for instruction in mother-tongue at primary stage.**— It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considered necessary or proper for securing the provision of such facilities.

350-B. Special officer for linguistic minorities.— (1) There shall be a Special Officer for linguistic minorities to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned].

351. Directive for development of the Hindi language.— It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary of desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

PART XVIII

EMERGENCY PROVISIONS

352.— (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may by Proclamation, make a declaration to that effect.

(2) A Proclamation issued under clause (1)—

(*a*) may be revoked by a subsequent Proclamation;

(*b*) shall be laid before each House of Parliament;

(*c*) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (*c*), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

Note.— In its application to the State of Jammu and Kashmir to Article 352, the following new clause shall be *added*:—

"(4) No Proclamation of Emergency made on grounds only of internal disturbance or imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir (except as respects Article 354) unless it is made at the request or with the

concurrence of the Government of that State": Constitution (J & K) Order, 1954, Para 13.

353. Effect of Proclamation of Emergency.— While a Proclamation of Emergency is in operation, then—

(*a*) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;

(*b*) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing, duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List.

354. Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation.— (1) The President may while a Proclamation of Emergency is in operation, by order direct that all or any of the provisions of Articles 268 to 279 shall for such period, not extending in any case beyond expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

(2) Every order made under clause (1) shall, as soon as may be after it is made be laid before each House of Parliament.

355. Duty of the Union to protect States against external aggression and internal disturbance.— It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

356. Provisions in case of failure of constitutional machinery in States.— (1) If the President on receipt of a report from the Governor [222]* * * of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

(*a*) assume to himself all or any of the functions of the Government of the State and all or any of the powers

vested in or exercisable by the Governor [223]* * * or any body or authority in the State other than the Legislature of the State;

(*b*) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(*c*) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days, from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the

date of the passing of the second of the resolutions approving the Proclamation under clause (3):

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the proclamation has been also passed by the House of the People.

Note.— In clause (1) of Article 356, references to provisions or provision of this Constitution shall, in relation to the State of Jammu and Kashmir be *construed* as including references to provisions or provision of the Constitution of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para 13.

357. Exercise of legislative powers under Proclamation issued under Article 356.— (1) Where by a Proclamation issued under clause (1) of Article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament it shall be competent—

(*a*) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;

(*b*) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (*a*), to make laws conferring powers and

imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof;

(*c*) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (*a*) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under Article 356, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the Proclamation before the expiration of the said period, unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature.

358. Suspension of provisions of Article 19 during emergencies.— While a Proclamation of Emergency is in operation, nothing in Article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

359. Suspension of the enforcement of the rights conferred by Part III during emergencies.— (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

360. Provisions as to financial emergency.— (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

(2) The provisions of clause (2) of Article 352 shall apply in relation to a Proclamation issued under this article as they apply in relation to a Proclamation of Emergency issued under Article 352.

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial property as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution—

(*a*) any such direction may include—

(*i*) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(*ii*) a provision requiring all Money Bills or other Bills to which the provisions of Article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State:

(*b*) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

PART XIX

MISCELLANEOUS

361. Protection of President and Governors and Rajpramukhs.— (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any Court for the exercise and performance of the powers and duties of

his office or for any act done or puporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor [224]* * * of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor [224]* * * of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor [224]* * * of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor [225]* * * of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor [226]* * *, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

[227]**362. Rights and privileges of Rulers of Indian States.**— (1) In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in [228]* * * Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.— (1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall

have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.

(2) In this article—

(*a*) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(*b*) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

364. Special provisions as to major ports and aerodromes.—(1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—

(*a*) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(*b*) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article—

(*a*) "major port" means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;

(*b*) "aerodrome" means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.

365. Effect of failure to comply with, or to give effect to, directions given by the Union.— Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.

Note.— Article 365 shall not apply to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para 14.

366. Definitions.— In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

(1) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;

(2) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;

(3) "article" means an article of this Constitution;

(4) "borrow" includes the raising of money by the grant of annuities, and "loan" shall be construed accordingly;

(5) "clause" means a clause of the article in which the expression occurs;

(6) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled—

(*a*) that it is not chargeable in respect of agricultural income;

(*b*) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;

(*c*) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian

income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;

(7) "corresponding Province", "corresponding Indian State" or "corresponding State" means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;

(8) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly;

(9) "estate duty" means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass;

(10) "existing law" means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, ordinance, order, bye-law, rule or regulation;

(11) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935;

(12) "goods" includes all materials, commodities, and articles;

(13) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount;

(14) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(*a*) any Court in the territory of India constituted or reconstituted under this Constitution as a High Court, and

(*b*) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution;

(15) "Indian State" means any territory which the Government of the Dominion of India recognised as such a State;

(16) "Part" means a Part of this Constitution;

(17) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;

(18) "Proclamation of Emergency" means a Proclamation issued under clause (1) of Article 352;

(19) "public notification" means a notification in the Gazette of India, or, as the case may be the Official Gazette of a State;

(20) "railway" does not include—

(*a*) a tramway wholly within a municipal area, or

(*b*) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway;

[229]* * * * *

(22) "Ruler" in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as in referred to in clause (1) of Article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler;

(23) "Schedule" means a Schedule to this Constitution;

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purpose of this Constitution;

(25) "Scheduled Tribes" means sucn tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution;

(26) "securities" includes stock;

(27) "sub-clause" means a sub-clause of the clause in which the expression occurs;

(28) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly;

(29) "tax on income" includes a tax in the nature of an excess profits tax;

[230][(30) "Union territory" means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule].

367. Interpretation.— (1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament, or to Acts or laws of, or made by, the Legislature of a State [231]* * *, shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor [232]* * *, as the case may be.

(3) For the purposes of this Constitution "foreign State" means any State other than India:

Provided that, subject to the provisions of any Law made by Parliament, the President may by order[233] declare any State not to be a foreign State for such purposes as may be specified in the order.

Note.— In its application to the State of Jammu and Kashmir, to Article 367, the following clause shall be added—

"(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir-

(*a*) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(*aa*) references to the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;

(*b*) preferences to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers;

Provided that in respect of any period prior to the 10th day of April, 1965, such references shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers;

(*c*) references to a High Court shall residents of the said State High Court of Jammu and Kashmir;

(*d*) references to the permanent residents of the said State shall be construed as meaning persons who, before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, were recognised as State subjects under the laws in force in the State or who are recognised by any law made by the Legislature of the State as permanent residents of the State; and

(*e*) references to a Governor shall include references to the Governor of Jammu and Kashmir;

Provided that in respect of any period prior to the 10th day of April, 1965, such references shall be construed as references to the person recognised by the President as the Sadar-i-Riyasat of Jammu and Kashmir and as including references to any person recognised by the President as being competent to exercise the powers of the Sadar-i-Riyasat: Constitution (J & K) Order, 1954, Para 14.

NOTES AND REFERENCES

1. This part shall be deemed to have been applicable in relation to the State of Jammu and Kashmir as from the 26th day of January, 1950: *ibid.*, Constitution (J & K) Order, 1954 Para 2(3) (*a*).
2. *Added* by the Constitution (First Amendment) Act, 1951, Section 2.
3. In clause (3) of Article 16, the reference to State shall be construed as not including a reference to the State of Jammu and Kashmir : *ibid*.
4. *Subs*. by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Schedule for "under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to, residence within that State."

5. *Subs*. by the Constitution (First Amendment) Act, 1951, Section 3. for:

> "(2) Nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law in so for as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."
>
> Section 3 (2) of the Amendment gives retrospective effect to the amended clause (2), and saves laws in force in the territory of India immediately before the commencement of the Constitution which are in consistent with the original clause but constituent with the amended clause.

6. *Ins*. by the Constitution (Sixteenth Amendment) Act, 1963, Section 2.
7. *Subs*. by the Constitution (First Amendment) Act, 1951, S. 3, for: "Nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empower any authority to prescribe, or prevent the state from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business."
8. *Subs*. by the Constitution (Fourth Amendment) Act, 1955, S, 2, for :

> "(2) No property, movable or immovable, including any interest in, or in any company owing, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

9. *Ins*. by the Constitution (First Amendment) Act, 1951. S. 4, (with retrospective effect).
10. *Subs*. by the Constitution (Fourth Amendment) Act, 1955, S. 3, (with retrospective effect), for:

> "(1) Notwithstanding anything in the foregoing provisions of this part no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment, or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part:

Provided that where such law is a law made by the legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

11. In its application to the State of Jammu and Kashmir, the proviso to clause (1) of Article 31-A shall be *omitted* : Constitution (J & K) Order, 1954, Para 4 (&).
12. *Ins.* by the Constitution (Seventeenth Amendment) Act, 1964, S, 2.
13. *Subs.* by the Constitution (Seventeenth Amendment) Act, 1964. Section 2, (with retrospective effect), for:

    "(*a*) the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any *jagir, inam* or *muafi* or other similar grant."
14. *Ins.* by the institution (Fourth Amendment) Act, 1955, Section 3 (with retroactive effect).
15. *Ins.* by the Constitution (First Amendment) Act, 1951, Section 5.
16. Not applicable to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954.
17. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, Section 27, for "declared by Parliament by law".
18. The words "or Rajpramukh or Up-Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
19. *Subs.* by the Constitution (Eleventh Amendment) 2, for members of both House of Parliament assembled or a joint meeting.
20. The words "or Rajpramukh Up-Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
21. *Ins.* by the Constitution (Eleventh Amendment) Act, 1961, Section 3.
22. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
23. The words and letters "specified in Part A or part B of the First Schedule *omitted* by Section 29 and Sch, *ibid*.
24. *See* Notification No. S. O. 2297, dated the 3rd November, 1958, *Gazette* of India, Extraordinary, 1958, part II, Section 3 (*ii*), p. 1315, as amended from time to time.
25. *Added* by the Constitution (Seventh Amendment) Act, 1956, S. 3.
26. The words and letter "specified in Part A or Part B of the First Schedule" *omitted* by S. 3. , *ibid*.
27. *Subs.* by S. 3, *ibid*., for "State specified in Part C of the First Schedule."

28. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, S. 4. for :

"81 (1) (*a*) Subject to the provisions of clause (2) and of Articles 82 and 331, the House of the People shall consist of not more than five hundred members directly elected by the voters in the States.

(*b*) for the purpose of sub-clause (*a*), the State shall be divided, grouped or formed into territorial constituencies and the numbers to be allotted to each such constituency shall be so determined as to ensure that there shall be *(not less than one member for every 7,50,000 of the population and) not more than one member for every 5,00,000 of the population.

(*c*) The ratio between the number of members allotted to each of territorial constituency and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as practicable, be the same throughout the territory of India.

(2) The representation in the House of the People of the territories comprised within the territory of India but not included within any State shall be such as Parliament may by law provide.

(3) Upon the completion of each census, the representation of the several territorial constituencies in the House of the People shall be readjusted by such authority, in such manner and with effect from such date as Parliament may by law determine:

Provided that such adjustment shall not affect representation in the House of the People until the dissolution of the then existing House."

"82. Notwithstanding anything in clause (1) of Article 81, Parliament may by law provide for the representation in the House of the People of any State specified in Part C of the First Schedule of any territories comprised within the territory of India but not included within any State on a basis or in any manner other than that provided in that clause."

*The words in the brackets in clause I (*b*) were deleted by the Constitution (Second Amendment) Act, 1952, S. 2.

29. *Subs.* by the Constitution (Fourteenth Amendment) Act, 1962, S. 2, for "twenty members".

30. *Subs.* by the Constitution (Sixteenth Amendment) Act, 1963, S. 4, for "Clause (*a*) is a citizen of India"

31. *Subs.* by the Constitution (First Amendment) Act, 1951, S. 6, for: "85. (1) the House of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.
(2) Subject to the provisions of Clause (1), the President may from time to time—
(*a*) summon the Houses or either House to meet at such time and place as he thinks fit;
(*b*) prorogue the Houses;
(*c*) dissolve the House of the people."
32. *Subs.* by s. 7, *ibid.*, for "every session."
33. The words "and for the precedence of such discussion over other business of the House" *omitted* by S. , *ibid.*
34. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
35. *Subs.* by Section 29 and Sch., *Ibid.*, for "such a State".
36. *See* the Prohibition of Simultaneous Membership Rules, 1950, published with the Ministry of Law, Notification No. F. 46/50-C, dated the 26th January,1950, *Gazette* of India, Extraordinary, p. 678.
37. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Schedule, for "a Province corresponding to a State specified in Part A of the First Schedule".
38. *Ins.* by the Constitution (Fifteenth Amendment) Act, 1963, S. 3.
39. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, S. 5 for:
"Provided that the said jurisdiction shall not extend to—
(*i*) a dispute to which a State specified in Part B of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar Instrument which has entered into or executed before the commencement of this Constitution and has, or has been, continued in operation after such commencement;
(*ii*) a dispute to which any State is a party, if the dispute arises out of the any provision of a treaty, agreement covenant, engagement, *sanad* or other similar Instrument which provides that the said jurisdiction shall not extend to such dispute."
40. Art. 135 shall not apply to the State of Jammu and Kashmir: *Ibid.*
41. Art. 139 shall not apply to the State of Jammu and Kashmir: *Ibid.*

42. *See* the Supreme Court (Decrees and Orders) Enforcement Order, 1954, published with the Ministry of Law Notification no. C. O. 47, dated the 14th January, 1954, *Gazette* of India Extraordinary, pt. II, Section 3, p. 75.
43. The words, brackets and figure "clause (*i*) of" *omitted* by the Constitution (Seventh Amendment) Act.
44. 1956, Section 29 and Sch, Subs. by Section 29 and Sch., for "said clause".
45. The words "or Rajpramukh" *omitted* by the Constintution (Seventh Amendment) Act, 1965, Section 29 and Sch.
46. The words "IN PART A OF THE FIRST SCHEDULE" *omitted* by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
47. *Subs.* by Section 29 and Sche., *ibid.*, for "means a State specified in Part A of the First Schedule".
48. Articles 153, 154 and 155 shall not apply to the State of Jammu and Kashmir; Constitution (J & K) order, 1954, Para. 5-A.
49. *Added* by the Constitution (Seventh Amendment) Act, 1956, 'Section 6.
50. Articles 156, 157 and 158 shall not apply to the State of Jammu and Kashmir; Constitution (J & K) Order 1954, Para. 5-A.
51. *Ins.* by the Constitution (Seventh Amendment) Act, 1956, Section 7.
52. Article 159 and 160 shall not apply to the State of Jammu and Kashmir; Constitution (J&K) Order, 1954, Para. 5-A.
53. Articles 161, 162 and 163 shall not apply to the State of Jammu and Kashmir, *ibid.*
54. Articles 161, 162 and 163 apply to the State of Jammu & Kashmir.
55. Article 164 and 165 shall not apply to the State of Jammu and Kashmir, *ibid.*
56. Art., 166 shall not apply to the State of Jammu and Kashmir, *ibid.*
57. Arts. 167 and 168 shall not apply to the State of Jammu and Kashmir, *ibid.*
58. *Ins.* by the Legislative Councils Act, 1957 (37 of (1957) S., 3 w.e.f. 1-7-1958.
59. The word "Bombay" *omitted* by the Bombay Reorganisation Act, 1960 (II of 1960), S. 20, w,e.f. 1-5-1960.
60. *Ins.* by the Constitution (Seventh Amendment) Act, 1956, S. 8(2) w.e.f. 15-8-1967.
61. *Ins.* by the Bombay Reorganisation Act, 1960 (II of 1960), S. 20, w.e.f. 1-5-1960.
62. *Ins.* by the Constitution [Seventh Amendment] Act, 1956, S. 8(1).

63. *Subs*. by the Constitution (Amendment of the First and Fourth Schedules) Order, 1950 (C.O. 3. dated the 25th January, 1950), for "the United Provinces".
64. Arts 169 and 170 shall not apply to the State of Jammu & Kashmir: Constitution (J & K) Order, 1954, para 5A
65. *Subs*. by the Constitution (Seventh Amendment) Act, 1956, S. 9, for:

"(1) Subject to the provisions of Article 333, the Legislative Assembly of a State shall be composed of members chosen by direct election.
(2) the representation of each territorial constituency in the Legislative Assembly of a State shall be on the basis of the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published and shall, save in the case of autonomous districts of Assam and the constituency comprising the cantonment and municipality of Shillong, be on a scale of not more than one member for every seventy-five thousand of the population:
Provided that the total number of member in the Legislative Assembly of a State shall in no case be more than five hundred or less than sixty.
(3) the ratio between the number of members to be allotted to each territorial constituency in a State and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as practicable, be the same throughout the State.
(4) Upon the completion of each census, the representation of the several territorial constituencies in the Legislative Assembly of each State shall be readjusted by such authority, in such manner and with effect from such date as Parliament may by law determine:
Provided that such adjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly."

66. Act 171 shall not apply to the State of Jammu and Kashmir; Constitution to (J & K) Order, 1954, Para 5-A.
67. *Subs* by the Constitution (Seventh Amendment) Act, 1956, S, 10. for "one-fourth".
68. Article 172 shall not apply to the State of Jammu and Kashmir; Constitution (J & K) Order, 1954, Para 5-A.
69. Articles 173 and 174 shall not apply to the State of Jammu and Kashmir, *ibid*.

70. *Subs.* by the Constitution (Sixteenth Amendment) Act, 1963, S. 4, for "clause (*a*) is a citizen of India:"
71. *Subs.* by the Constitution (First Amendment) Act, 1951, S. 8, for: "(1) The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year and six months shall not intervene
72. Article 175, 176 and 177 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.
73. *Subs.* by, the Constitution (First Amendment) Act, 1951, S. 9, for "every session".
74. The words "and for the precedence of such discussion over other business of the Houses" *omitted* by S. 9, *ibid.*
75. Article 178 and 179 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.
76. Article 180, 181 and 182 shall not apply to the State of Jammu and Kashmir, *ibid.*
77. Articles 183 and 184 shall not apply to the State of Jammu and Kashmir, *ibid.*
78. Articles 183 and 184 shall not apply to the State Jammu and Kashmir, *ibid.*
79. Articles 185, 186 and 187 shall not apply to the State of Jammu and Kashmir, *ibid.*
80. Articles 188 and 189 shall not apply to the State of Jammu and Kashmir, *ibid.*
81. Articles 190 shall not apply to the State of Jammu and Kashmir, *ibid.*
82. *See* the Prohibition of Simultaneous Membership Rules, 1950, published with the Ministry of Law Noti. No. F-46/50-C, dated the 26th January, 1950, *Gazette* of India, Extra., p. 678.
83. Article 191 shall not apply to the State of Jammu & Kashmir; Constitution (J & K) Order, 1954, Para 5-A.
84. Articles 192 and 193 shall not apply to the State of Jammu and Kashmir, *ibid.*
85. Articles 194 and 195 shall not apply to the State of Jammu and Kashmir, *ibid.*
86. Articles 194 and 195 shall not apply to the State of Jammu and Kashmir, *ibid.*
87. Articles 196 shall not apply to the State of Jammu and Kashmir, *ibid.*
88. Articles 197 shall not apply to the State of Jammu and Kashmir, *ibid.*
89. Article 198 shall not apply to the State of Jammu and Kashmir, *ibid.*

90. Articles 199 shall not apply to the State of Jammu and Kashmir, *ibid*.
91. Articles 200 shall not apply to the State of Jammu and Kashmir, *ibid*.
92. Articles 201 shall not apply to the State of Jammu and Kashmir, *ibid*.
93. Articles 202 shall not apply to the State of Jammu and Kashmir, *ibid*.
94. Articles 203 and 204 shall not apply to the State of Jammu and Kashmir, *ibid*.
95. Articles 203 and 204 shall not apply to the State of Jammu and Kashmir, *ibid*.
96. Articles 205 shall not apply to the State of Jammu and Kashmir, *ibid*.
97. Articles 206 shall not apply to the State of Jammu and Kashmir, *ibid*.
98. Articles 207 shall not apply to the State of Jammu and Kashmir, *ibid*.
99. Articles 206 shall not apply to the State of Jammu and Kashmir, *ibid*.
100. Articles 209, 210 and 211 shall not apply to the State of Jammu and Kashmir, *ibid*.
101. Articles 212, and 213 shall not apply to the State of Jammu and Kashmir, *ibid*.
102. Articles 212, 213 shall not apply to the State of Jammu and Kashmir, *ibid*.
103. Articles 214, 215, 216 and 217 shall not apply to the State of Jammu and Kashmir, *ibid*.
104. The brackets and figure "[1]" omitted by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
105. Cls., (2) and (3) *omitted* by S. 29 and Sch., *ibid*. These clauses read as follows:

> "(2) For the purposes of this Constitution the High Court exercising jurisdiction in relation to any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.
>
> (3) The provisions of this Chapter shall apply to every High Court referred or in this article."

106. Proviso *omitted* by S. 11, *ibid*. It read as:

> "Provided that the Judges so appointed shall at no time exceed in number such maximum under as the President most from time to time, by order fix in relation to that Court."

107. *Subs*. by S. 12, *ibid*., for "shall hold office until he attains the age of sixty years".
108. *Subs*. by the Constitution (Fifteenth Amendment) Act, 1963, Section 4, for "sixty years".
109. The words "in any State specified in the First Schedule" *omitted* by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.

110. *Ins.* by the Constitution (Fifteenth Amendment) Act, 1963, Section 4 (with retrospective effect).
111. Article 219 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.
112. The words "in a State" omitted by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
113. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, Section 13, for:—
"No person who has held office as a Judge of a High Court after the commencement of this Constitution shall plead or act a in any court or before nay authority within the territory of India."
114. 26th January, 1960, in respect of the State of Jammu and Kashmir: Constitution (J & K) Amendment Order, 1960.
115. Ist November, 1956.
116. Article 221 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.
117. The Words "within the territory of India" omitted by the Constitution (Seventh Amendment) Act, 1956, Section 14.
118. *Ins,* by the Constitution (Fifteenth Amendment) Act, 1963, Section 5. Original clause (2) Which read as follows was *omitted* by the Constitution (Seventh Amendment) Act, 1956, Section 14:
"(2) When a Judge is so transferred, he shall, during the period he serves as a Judge of the other Court,be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law, and, until so determined, such compensatory allowance as the President may by order fix."
119. Articles 223 and 224 shall to apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.
120. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, Section 15, for:—
"Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be a Judge of that High Court:
Provided that nothing in this Article shall be deemed to require any person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do."

121. *Subs.* by the Constitution (Fifteenth Amendment) Act, 1963, Section 6 for "sixty years".
122. *Ins.* by Section 7, *ibid.*
123. Article 225 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.
124. Article 226 and 227 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.
125. *Ins.* by the Constitution (Fifteenth Amendment) Act, 1963, Section 8.
126. *Subs.* by Section 8, *ibid.*, for "clause (1)".
127. Article 225 and 227 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.
128. Article 228 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.
129. Article 229 shall not apply to the State of Jammu and Kashmir, *ibid.*
130. The words "in which the High Court has its principal seat" *omitted* by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Schedule.
131. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, Section 16, for the original Articles 230, 231 and 232 which read as follows.

"230. Parliament may by law—

(*a*) extent the jurisdiction of a High Court to, or

(*b*) exclude the jurisdiction of a High Court from any State specified in the First Schedule other than, or any area not within, the State in which the High Court has its principal seat.

231.Where a High Court exercises jurisdiction in relation to any area outside the State in which it has it principal seat, nothing in this Constitution shall be construed—

(*a*) as empowering the Legislature of the State in which the Court has its principal seat to increase, restrict or abolish that jurisdiction;

(*b*) as empowering the Legislature of a State specified in Part A or Part B of the First Schedule in which any such area is situate, to abolish that jurisdiction; or

(*c*) as preventing the Legislature having power to make laws in that behalf for any such area, from passing, subject to the provisions of clause (*b*), such laws with respect to the jurisdiction of the Court in relation to that area as it would be competent to pass if the principal seat of the Court were in that area.

232. Where a High Court exercises jurisdiction in relation to more that one State specified in the First Schedule or in relation to a State and an area not forming part of the State—

(*a*) references in this Chapter to the Governor in relation to the Judges of a High Court shall be construed as references to the Governor of the State in which the Court has its principal seat;

(*b*) the reference to the approval by the Governor of rules, forms and tables for subordinate Courts shall be construed as a reference to the approval thereof by the Governor or the Rajpramukh or the State in which the subordinate Court is situate, or if it's situate in an area not forming part of any State specified in Part A or Part B of the First Schedule, by the President; and

(*c*) references to the Consolidated Fund of the State shall be construed as references to the Consolidated Fund of the State in which the Court has its principal seat."

132. Article 230 and 231 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.

133. Article 253 shall not apply to the State of Jammu and Kashmir, *ibid*.

134. *Ins*. by the Constitution (Twentieth Amendment) Act, 1966, Section 2.

135. Article 234 and 235 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, Para 5-A.

136. Articles 236 and 237 shall not apply to the State of Jammu and Kashmir, *ibid*.

137. Not applicable to the State of Jammu and Kashmir; Constitution (J & K) Order, 1954.

138. *Subs*. by the Constitution (Seventh Amendment) Act, 1956, S.17, for the original heading "THE STATES IN PART C OF THE FIRST SCHEDULE".

139. *Subs*. by S. 17 *ibid*. for the original Arts, 239 and 240.

140. *Ins*. by the Constitution (Fourteenth Amendment) Act, 1962, S. 4.

141. *Ins*. by the Constitution (Tenth Amendment) Act, 1961, S. 3.

142. *Ins*. by the Constitution (Twelfth Amendment) Act, 1962, S. 3.

143. *Ins*. by the Constitution (Fourteenth Amendment) Act, 1962, S. 5 and 7, w.e.f. 16-8-1962.

144. Ins. by S. 5, *ibid*.

145. *Subs*. by the Constitution (Seventh Amendment) Act, 1956, S. 29 an Sch., for "State specified in Part C of First Schedule".

146. *Subs*. by S. 29 and Sch., *ibid*., for "such State".

147. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, S, 29 and sch., for the original cls. (3) and (4).
148. Not applicable to the State of Jammu and Kashmir: Constitution (J & K) Order, 1964.
149. The word and letters "specified in part A or Part B of the First Schedule" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
150. In its application to the State of Jammu and Kashmir, in Article 246, for the words, brackets and figures "clause (2) and (3)" occurring in clause (1), the word, brackets and figure "clause (2)" shall be substituted, and the words, brackets and figure "Notwithstanding anything in clause (3), "occurring in clause (2) and the whole of clause (3) and (4) shall be *omitted:* Constitution (J & K) Order, 1954, Para 6.
151. The words and letters "specified in Para A or Part B of the First Schedule" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
152. *Subs.* for "in Part A or B of the First Schedule" by S. 29 and Sch. of the Constitution (Seventh Amendment) Act, 1956.
153. Article 248 and 249 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954, para 6.
154. The words and letter "specified in Part A or B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
155. Art. 255 shall not apply to State of Jammu and Kashmir.
156. The words and letter "specified in Part A or B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, section 29 and Sch.
157. *Ins,.* by the Constitution (Seventh Amendment) Act, 1956, S. 18.
158. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
159. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch, for "State specified in Part C of the First Schedule".
160. *Ins.* by the Constitution (Sixth Amendment) Act, 1956, S. 3.
161. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Schedule, for "States specified in Part C of the First Schedule".
162. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Schedule, for "States specified in Part C of the First Schedule".
163. Sub-clause (*c*) which read as follows was *omitted* by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch:

(*c*) the Constitution or modification of the terms of any agreement entered into by the Government of India with the Government of any of State specified in Part B of the First Scheduled under clause (1) of Article 278 or under Article 306 ; and "

164. Sub-clause (*d*) was relettered as sub-clause (*c*) by section 29 and Sch., *ibid*.

165. This clause shall not apply to the State of Jammu and Kashmir : *ibid*.

166. The words "or Rajapramukh" *omitted* by the Constitution Seventh Amendment Act, 1956, Section 29 and Sch.

167. Explanation to clause (1) which read as follows was omitted by the Constitution (sixth Amendment) Act, 1956, section 4:
"*Explanation*.— For the purposes of clause (*a*), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, Notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State."

168. *Subs*. by section 4, *ibid*., for:—
"(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce:
Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provision of this clause, continue to be levied until the thirty-first day of March, 1951.
(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

169. *Ins*. by the Constitution (Seventh Amendment) Act, 1956, Section 19.

170. The brackets and figure "(1)" *omitted* by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.

171. Clause (2) which read as follows was *omitted* by Section 29 and Sch., *ibid*—

"(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part A or Part B of the First Schedule, there shall be charged on, and paid out of, the Consolidated Fund, of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) and for such period as may subject to any agreement entered into in that behalf under clause (1) of Article 278, be determined by order of the President."

172. *Ins.* by the Constitution Fifteenth Amendment) Act, 1963, Section 20, for:

"(1) The executive power of the Union and of each State shall extend, subject to any law made by the appropriate Legislature to the grant, sale, disposition or mortgage of any property held for the purpose of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.

(2) All property acquired for the purposes of the Union or of a State shall vest in the Union or in such State, as the case may be."

174. The words "or the Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.

175. The words "or the Rajpramukh, *omitted* by Section 29 and Sch., *ibid*.

The corresponding section of the Government of India Act, 1935, was—

"175. *Power to acquire property and to made contracts, etc.*— (1) The executive authority of the Federation and of a Province shall extend; subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for the purpose of the Government of the Federation or of the Province, as the case may be, and to purchase or acquisition of property on behalf of His Majesty for those purposes respectively, and to the making of contracts:

Provided that any land or building used as an official residence of the Governor-General or a Governor shall not be sold, nor any change made in the purposes for which it is being used, except with the concurrence, in his discretion, of the Governor-General or Governor, as the case may be.

(2) All property acquired for the purposes of the Federation or of a Province or of the exercise of the function of the

Crown in its relation with Indian State, as the case may be, shall vest in His Majesty for those purposes.

(3) Subject to the provisions of this Act with respect to the Federal Railway Authority, all contracts made in the exercise of the executive authority of the Federation of or a Province shall be, expressed to be made by the Governor-General, or by the Governor of the Province, as the case may be, and all such contracts and all assurances or property made in the exercise of that authority shall be executed on behalf of the Governor-General or Governor by such person and in such manner as he may direct or authorise.

(4) Neither the Governor-General, nor the Governor of a province, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act, or for the purposes of the Government of India Act or any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof."

176. *Ins.* by the Constitutions (Seventh Amendment) Act, 1956, S. 29 and Sch.

177. *Subs.* by the Constitution (Fourth Amendment) Act, 1955, S. 4, for :

Nothing in Articles 301 and 303 shall affect the provision of any existing law except in so far as the President may by order otherwise provided."

178. *Rep.* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.

The article read as—

"*Power of certain States in Part B of the First Schedule to impose restrictions on trade and commerce.*— Notwithstanding anything in the forgoing provisions of this Part or in any other provisions of Constitution, any State specified in Part B of the First Schedule which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other State or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the Finance Commission constitution under Article 280, he thinks it necessary to do so."

179. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch., for "means a State specified in Part A or B of the First Sch."
180. The words "or Rajpramukh" *omitted* by S. 29 and Sch., *ibid*.
181. The words "or, as the case may be, the Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
182. The words "or Rajpramukh" *omitted* by S. 29 and Sch., *ibid*.
183. The words "or the Rajpramukh" *omitted* by S. 29 and Sch" *ibid*.
184. *Subs.* by the Constitution (Fifteenth Amendment) Act, 1963, S. 10, for—

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply—

(*a*) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(*b*) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity; or

(*c*) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

185. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
186. *Ins.* by the Constitution (Fifteenth Amendment) Act, 1963, S.11.
187. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
188. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment" Act, 1956, S. 29 and Sch.
189. The words " or Rajpramukh" *omitted* by the Constitution (Seventh Amendment" Act, 1956, S. 29 and Sch.

190. The words "or Rajpramukh, as the case may be" *omitted* by S. 29 and Sch., *ibid*.
191. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment" Act, 1956, S. 29 and Sch.
192. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
193. The words "or Rajpramukh, as the case may be" *omitted* by S. 29 and Sch., *ibid*.
194. The words "including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the legislatures of State" *omitted* by the Constitution (Nineteenth Amendment) Act, 1965, S. 2.
195. The words "or Rajpramukh" *omitted*, by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
196. Article 328 shall not apply to the State of Jammu and Kashmir: Constitution (J & K) Order, 1954.
197. *Ins*. by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
198. *Ins*. by Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
199. Article 331 and 332 shall not apply to the State of Jammu and Kashmir : Constitution (J & K) Order, 1954, Para II.
200. The words and letter "specified in Part A or Part B of the First Schedule" *omitted*, by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
201. The words "or Rajpramukh" *omitted*, by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
202. *Subs*. by the Constitution (Eighth Amendment) Act, 1959, Section 2, for "ten years".
203. Article 336 and 337 shall not apply to the State of Jammu and Kashmir: *ibid*.
204. The words and letters "specified in part A or Part B of the First Schedule" *omitted*, by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.
205. The words and letters "specified in Part A and Part B of the First Schedule" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
206. Subs. by S. 29 and Sch., *ibid* for "any such State".
207. *Subs*. by the Constitution (First Amendment) Act, 1951, S. 10, for "may, after consultation with the Governor or Rajpramukh of a State".
208. *Ins*. by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.

209. The words and letters "specified in Part A or Part B of the First Schedule" *omitted* by S. 29 and Sch., *ibid*.
210. The words "or Rajpramukh" omitted by S. 29. and Sch. *ibid*.
211. See the Constitution (Scheduled Castes) Order, 1950, published with the Ministry of Law Noti. No. C.O. 19, dated the 10th August, 1959, *Gazette* of India, Extraordinary, Part II, Section 3, P. 163, as amended from time to time; the Constitution (Schedule Castes) (Union Territories) Order, 1951, published with the Ministry of Law Notification No., C.O. 32, dated the 20th September, 1951, *Gazette* of India, Part II, Section 8, p. 1198; the Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956, published with the Ministry of Law Notification No., C.O. 52, dated the 22nd December, 1956, *Gazette* of India, Extraordinary, Part II, Section 3, p. 2688-A, the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962, published with the Ministry of Law Notification No. C.O. 64, dated the 30th June, 1962, *Gazette* of India, Extraordinary, Part II, Section 3(*i*), p. 389; and the Constitution (Pondicherry) Scheduled Castes Order, 1964, published with the Ministry of Law Notification No. C.O. 68, dated the 5th March, 1964, *Gazette* of India, Extraordinary, Part II, Section 3 (*i*), p. 327.
212. *Ins*. by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
213. Art. 342 shall not apply to the State of Jammu and Kashmir; Constitution (J & K) Order, 1954, Para II.
214. *Subs*. by the Constitution (First Amendment) Act, 1951, S. II, for "may, after consultation with the Governor or Rajpramukh of a State".
215. The words and letters "specified in Part A or Part B of the First Schedule" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
216. The words "or Rajpramukh" omitted by S. 29 and Sch., *ibid*.
217. *See* the Constitution (Scheduled Tribes) Order, 1950, published with the Ministry of Law Notification No, C.O. 22, dated the 6th September, 1950, *Gazette* of India, Extraordinary, Part II, Section 3, p. 597, as amended from time to time; the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, published with the Ministry of Law, Notification No. C.O. 33, dated the 20th September, 1951, *Gazette* of India, Extraordinary, Part II, Section 3, p. 1198 G; the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959, published with the Ministry of Law Notification No. C.O. 58 dated the 31st March, 1959, *Gazette* of India, Extraordinary, Part II, Section 3(*i*), p. 151; and the Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962, published with the Ministry

of Law Notification No. C.O. 65, dated the 30th June, 1962, *Gazette* of India, Extraordinary, Part II, Section 3(*i*), p. 389.

218. *Ins.* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
219. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
220. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
221. Ins. by the Constitution (Seventh Amendment) Act, 1956, S. 21.
222. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
223. The words "or Rajpramukh, as the case may be" *omitted* by S. 29 and Sch, *ibid*. 224. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
225. The words "or Rajpramukh" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
226. The words "or the Rajpramukh" *omitted* by S. 29 and Sch., *ibid*
227. Article 362 shall not apply to the State of Jammu and kashmir; Constitution (J & K) Order, 1954, Para 14.
228. the words brackets and figure "clause (I) or" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
229. Clause (21) "Rajpramukh' means" *omitted* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch.
230. *Subs.* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch., for the original clause (30).
231. The words and letters "specified in Part A or Part B of the First Schedule" *omitted* by S. 29 and Sch. *ibid*.
232. The words "or Rajpramukh" *omitted* by S. 29 and Sch. *ibid*
233. *See* the Constitution (Declaration as to Foreign States) Order, 1950, published with the Ministry of Law, Order No. C.O. 2, dated the 23rd January, 1950, *Gazette* of India, Extra., p. 80-N.

CHAPTER 2

Fundamental Rights and Constitutional Amendment

CONSTITUTION of a country may be described as the foundational or the fundamental law on which all other legislation is based, tested and braced. In a written Constitution, the authority, jurisdiction and powers of various organs of the State—Legislative, Executive or Judicial—as defined and delimited by the provisions of the Constitution. The amendment of the Constitution connotes a definite and formal process of constitutional change.

The nature and scope of the power to amend the Constitution in the countervailing pressures in the working of the Constitution during last 18 years has assumed considerable importance. The Constitution came into force on January 26, 1950 has already been amended. Of the 21 amendments made so far, six amendments (of which affected Fundamental Rights) were in reaction against the Supreme Court's interpretation of the Constitution, one was in acceptance of the Supreme Court's opinion, and fourteen were to meet with the changed circumstances or to make minor improvements or changes, something of consequential nature, in other articles of the Constitution. Of the four Constitution Amendments involving Fundamental Rights, two affected freedom of speech and expression in article 19(1) (*a*) and (2); one affected right to equality of the majority community as opposed to Scheduled Castes and Tribes, and educationally and socially backward classes in article 15 and 29, one affected right to carry on trade and business article 19(1) (*g*) and three affected right to property in articles 31 A and 31B.

The Supreme Court and the Constitution

The power of Judicial Review on the constitutionality of state action has been speficially recognised in the Constitution of India. Article 368 empowers the courts to declare a law void if it is found to be inconsistent with the fundamental rights. For the enforcement of these rights, power to issue any order or direction or writ to any person or authority including governments is conferred on the Supreme Court by article 32 and on High Courts by article 226. The remedial right enshrined in article 226 is also a guaranteed fundamental right.

The interpretative power of the Supreme Court is often exercised *ex post facto*, except when the President refers for its opinion any question of law or fact of public importance under article 143. The Constitution is addressed not only to the judiciary but to the other departments, legislature and executive as well, so that it is agreed by some that they know their functions and limitations. Until the Supreme Court's authoritative opinion on a particular provision of the Constitution comes forth they have the right to act, in discharge of their functions and exercise of their powers as they understand the Constitution. In this respect, their right to act does not not rest on the sufferance of the Supreme Court. This has been fundamental consideration with the U.S. Supreme Court in giving restrictive interpretation to certain constitutional limitations as a mark of respect or credence for or accommodating gesture to the other department understanding of the scope and extent of the constitutional limitations. It can also be said that this consideration proceeds from the belief that Supreme Court's understanding is not always infallible.

The question of the amendability of fundamental rights come before the Supreme Court of India at there different times in the cases of *Shankari Prasad* v. *Union of India, Sajjan Singh* v. *State of Rajasthan* and *Golak Nath* v. *State of Punjab.*

With their pronouncements in *Shankari Prasad Deo* v. *Union of India* (unanimous) reiterated in *Sajjan Singh* v. *State of Rajasthan* (by a major of 3:2) the Supreme Court was taken to have affirmed the proposition the fundamental rights of the individual under the Constituting—though sacrosanct and constitution limitations on the power of the executive and legislature—are not immutable and absolute in character but subject to Parliament's

power to amend the Constitution under article 368. Now, a contrary view has been taken by the Court in *Golak Nath* v. *State of Punjab,* describing inviolability and transcendentality to the individual's fundamental rights under the Constitution. In this view, it is beyond the competence of Parliament acting under article 368 to take away or abridge the fundamental rights.

Constitutional Provisions Involved and the Problems of Interpretation

The relevant provision of the Constitution on the interpretation of which the present controversy revolves are articles 12, 13 and 368. The problems in the interpretations briefly are:

(*i*) What is the meaning of the words any law in article 13(2)? Does it include Constitutional Law or Acts of Parliament amending the Constitution?

(*ii*) What is the meaning of the words 'this Constitution', and 'the Consititution shall stand amended in accordance with the terms of the Bill', used in the substantive part of article 368 and the heading of Part XX 'Amendment of the Constitution'? If these are taken to have reference to the whole of the Constitution then the fundamental rights cannot be excepted from the power to amend the Constitution under article 368.

Approached in terms of the literal connotation of these words and phrases the above two conflicting positions emerge. Such a conflict is resolved by the Courts either by applying the doctrine of harmonious construction or rendering policy judgment, by evaluating the propositions against historical, sociological, philosophical and pragmatic considerations. The first is a technical rule of construction commonly adopted by the Courts in England, Australia and Canada, whereas the second is often adopted by the Courts in the U.S.A. Different conclusions are arrived at by making use of the one method or the other.

Meaning of 'Amendment' and 'Change'

In the substantive part of article 368 the words 'amendment of this Constitution' are used, whereas the proviso to it is applicable

only when the 'amendment' seeks to make 'change' in the specified articles. Amendment literally means "removal of faults or errors, reformation, the alteration of a Bill before Parliament, a proposed alteration which if adopted may even defeat the measure", meaning thereby the Bill to which the amendment was proposed. Whereas, the word 'change' literally means the act of fact of changing, substitution or succession of one thing in place of another, substitution of other conditions, variety." The term 'amendment', as understood by the student of government and the Constitution "has the core denotation of alteration or change. Historically, the change or alteration denoted was for the sake of correction or improvement". In the realities and controversies of politics, however, the nature of correction or improvement becomes uncertain so that alteration or change remains the only indisputable meaning as the term is applied..."

However, the fact that the Framers have used the words 'amendment' and 'change' in the very same sentence in the Proviso to article 368 suggests an irrefutable conclusion that they knew of the distinctive meaning these words bear and that the context in which they are used, that is to say, if the 'amendment seeks to make change', in certain specified articles vital for safeguarding the basis characteristics of the federal policy then only it will be subjected to further requirements, would indicate that the words amendment' used in the substantive part is wider than and includes 'changes'. In other words, from this juxtaposition one would infer that Framers used the word 'amendment' in the substantive part of the article in the latter sense, i.e., as understood by the student of Government and the Constitution, and not the sense in which they are defined in the dictionaries. The framers of the Constitution remained assumptive of this general proposition of the Constitutional law, particularly of the U.S., France, and Japan when they drafted article 368 by using the word 'amendment' therein, in spite of the fact that they had before them the examples of other Constitutions, wherein the words "variation, addition, repeal, alteration", were used instead or in addition to or by way of explaining the word 'amendment'.

Rejecting the dictionary meaning of the word 'amendment' the Supreme Court (per majority) in *Sajjan Singh* v. *State of Rajasthan* took the view that "in the context reliance on the

dictionary meaning of the word is singularly inappropriate, because what article 368 authorises to be is the amendment of the provisions of the Constitution. It is well known that the amendment of a law may in a proper case include the deletion of *any one or more of the provisions* of the law and substitution in the place of new provisions. Similarly, an amendment...may include modifications or change of the provisions or even an amendment which in the said provision inapplicable in certain cases". Justice Hidayatullah, (dissenting on other point) however, noted a distinction between 'amendment' and 'change' for arriving at the conclusion of majority. Concurring with this view, for Justice Wanchoo (dissenting minority) in *Golak Nath's* case, it did not matter whether the words 'repeal, alteration, variation' were not used in addition to amend because that in fact was the meaning given to the words in law. But learned Judge (and also Bachawat, J. dissenting) when persuade to extend the logic of this reasoning to hold that the scope of the words could get the length of abrogating the whole of the Constitution and substitution in its place a new one or substitution or abolishing the vital institution forming the basic characteristics of the Constitution, were content to that it was open to doubt, but were positive to bring within the reach its comprehensive scope the fundamental rights of the individual. Justice Subba Rao (speaking for the majority), likewise, felt no necessity to express considered opinion on this all important question, but, differ from the minority view, held that certainly its reach, to the extent of taking away or abridging, cannot extend to the fundamental rights.

Taking these two judgments into consideration the scope of the meaning of the word 'amendment' would emerge thus: (*i*) the word 'amendment' does not bear the restricted dictionary meaning but is wide and includes change, substitution, modification, deletion, repeal etc., this wider scope of the word does not extend to each and every provision of the Constitution; and (*iii*) it does not extend to the extent of taking away or abridging the fundamental rights (according to the majority) and as to whether or not it extends to the provisos dealing with the fundamental institutions established under the Constitution the whole Court unanimously deferred the question. The question, to which of the provision of the Constitution its reach extends,

needs answer from the court each time, unless final opinion is delivered on this point.

Scope of Article 368 *vis-a-vis* Article 13(2)

Article 368 speaks of "an amendment of *this Constitution*" in accordance with the procedure laid down therein for the purpose. The word "this Constitution" suggest two possible views in respect of the provisions of the Constitution that fall within the substantive part of the article:

(*a*) It may be said that the Framers having mentioned only certain articles or parts of the Constitution in the Proviso, can be taken to have attached less importance to all other provisions of the Constitution. As such they necessarily fall within the scope of the substantive part of the article, by meaning *'this Constitution'* each and every provision of the Constitution. The Constitution being a legal sovereign, anybody in whom it has conferred constituent power would be competent enough to remove those limitations, by amending the Constitution.

(*b*) On the other hand, it may be said that what importance or sanctity the Framers have attached to the other provisions of the Constitution, must necessarily be ascertained from the words of the respective provision, historical background and fundamental purpose of the Constitution. The Supreme Court in *State of West Bengal* v. *Union of India* in the context of Federal-State relations, categorically stated that legal sovereignty under the Constitution resides in the people. The British Parliament had transferred the sovereignty to the Constituent Assembly. The Constituent Assembly having said in the opening words of the Preamble, "We the people of India" was deemed to have transferred the legal sovereignty to the people of India or recognised the fact that since the mandate they held from the people of India was of a limited nature, and to frame a Constitution regulating or controlling the exercise of political power, they were not entitled to possess the residual sovereignty which ultimately passed on the people of India. So undersood, the people of India have given to themselves a Constitution which provides limitations or restrictions on the freedom of the holders of political power. As such, the word 'Constitution' in article 368 means only so much of it and no more, and that is

why in regard to the units or organs wielding political power emphasis has been given to the basic elements of the federal polity by providing additional safeguards in matters important for relations *inter se*. In this context Parliament exercising power under article 368 in just another kind of body exercising political power, and the acts done by it would only be 'law' which is otherwise called 'Constitutional law'. But this 'Constitutional law' is devoid of the ultimate legal sovereignty which the word 'law' in article 13 and the fact that Framers, even though they had before, them the provision of other Constitutions relating to amendments distinctly stating "any provision of this Constitution" and "any of the proviso of this Order (Consititution)" etc., were content to use the words "this Constitution" might lead to such a construction.

Judicial Interpretations

(*i*) The major premise of the first view was formulated by the Supreme Court in *In re* Delhi Laws Act. Majority of the judges (including Sastri, J., as he then was) took the view that the Constitution being sovereign, the legislature, when acting within the limits circumscribing its legislative power, has and was intended to have plenary power of legislation. The Constitution though "is a gift of the people of India to themselves, it is not a sound political theory that the legislature acts merely as a delegate of the people. As was stated by Sastri, J., "the maxim *delegatus non potest delegare* is not part of the constitutional law of India and has no more force than a political precept to be acted upon by the legislature in the discharge of their function of making laws, and the courts cannot strike down an act of Parliament as unconstitutional merely because Parliament decided in a particular instance to entrust its legislative power to another in whom it has confidence or, in other words, to exercise such power through its approved instrumentality however repugnant such entrustment may veto the democratic process. What may be regarded as politically undesirable is constitutionally competent." This latter part of the observation was adopted by the majority in *Sajjan Singh* v. *State of Rajasthan* as a rule of construction by saying that "so far as our Constitution is concerned, it would not be possible to deal with the question

about the powers of Parliament to amend the Constitution under article 365 on any theoretical concept of political science that sovereignty vests in the people and the legislatures are merely the delegate of the people. Whether or not Parliament has the power to amend the Constitution must depend solely upon the question as to whether the said power is included in article 368. The question about the reasonableness or expediency or desirability of the amendments in questions from a political point of view would be irrelevant in construing the words of article 368." In fact the observations of Sastri, J. in the context related to the question of the delegation of legislative power. So far as the nature of the fundamental rights is concerned the learned judge had stated earlier in the same paragraph that "it is true to say that, in a sense the people delegated to the legislative, executive and the judicial organs of the state their respective powers while reserving to themselves the fundamental rights which they made paramount by providing that *the state* shall not make law which takes away or abridges the rights conferred by that part."

But Sastri, J., in *Shankari Prasad* v. *Union of India* (speaking for the Court) had to clarify assertions in *Gopalan's* case and *In re* Delhi Laws Act case in relation to the power to amend the Constitution under article 368. The learned Justice accepted, following Dicey, that the Constitution mainly concerns with the creation of three organs of the state and the distribution of governmental powers among them and definition of their mutual relation; and that no doubt our Constitution-makers, following the American model, have incorporated certain fundamental rights in Part III and made them immune from interference by laws made by the State, but thought that they were not intended to be immune from Constitutional amendment, because:—

(1) the Framers must have had in mind frequent occurrence of invasion of rights by the legislature and executive in exercise of their legislative power and not by alterations of the Constitution itself in *Exercise of sovereign constituent power;*

(2) if they were intended to be saved from the invasion by exercise of constituent power, it was easy for the

Framers to make the intention clear by adding a proviso to that effect; and

(3) both articles 368 and 13(2) are widely phrased. Applying the doctrine of harmonious construction *for the reason stated above,* 'law' in article 13 must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments of the Constitution.

Gajendragadkar, C.J. (for the majority) in *Sajjan Singh* v. *State of Rajasthan* added four more reasons;

(4) the words used in the proviso unambiguously indicate that the substantive part of the article applies to all the provisions of the Constitution and it is on this basic assumption that the proviso prescribes a specific procedure in respect of amendment of the articles mentioned in clauses (*a*) to (*c*) thereof;

(5) that when the Framers took the precaution of excluding certain matters from the scope of article 368, e.g., article 4 (2) and article 169 (3) if they intended, they could have likewise excluded fundamental rights from the scope of the amending power under article 368;

(6) that the Framers circumscribing the fundamental rights by making specific provisions in Part III itself must have anticipated that in dealing with socio-economic problems the legislature may have to face, from time to time, the concept of public interest and other important considerations, which from the basis of restrictions on the fundamental rights may change and may even expand, as such it is legitimate to assume that they knew that Parliament should be competent to make amendments in these rights; and

(7) that the theory of the immutability or inviolability of the fundamental rights breaks when the problem is viewed against the power of Parliament to amend article 368 itself which is specifically provided in it. Therefore, *even if the power to amend the fundamental rights were not included in article 368, Parliament can, by a suitable amendment of article 368 itself, take those powers.*

According to this view, legal sovereignty resides in the Constitution and would come to be exercised by the body which

is empowered to amend the Constitution. For arriving at this view, however, article 13 has to be read subject to article 368 taking into consideration the general prevailing principles of constitutional law in the U.S.A. and other countries, which, in the context, were assumed to have been the basis for the formulation of our Constitution. Through these general considerations the learned judge in fact, brought to the fore the intention of the Framers expressed in the statements of Dr. Ambedkar (partly) and Shri Jawaharlal Nehru in the Constituent Assembly.

Controverting the majority view that the procedure laid down in article 368 for amending the Constitution is an ordinary legislative procedure with additional requirements as such what emerges thereafter is 'law' of the same nature as ordinary legislative 'law' and cannot be immune from the inhibitions of article 13, Wanchoo, J. (as he then was, speaking for minority) in *Golak Nath's* case added another reason to these:

(8) A bill passed by following the procedure laid down in article 111 on being assented to by the President is not declared to be a 'law' for such a law is open to challenge in Courts on various grounds that it is in breach of any provision of the Constitution or that Parliament was not competent to pass it, whereas a Bill for the amendment of the Constitution if passed by requisite majority and assented to by the President, the Constitution itself declares that *the Constitution shall stand amended in accordance with the terms of the Bill*. This means:

(*a*) The procedure laid down in article 368 cannot be considered akin to ordinary legislative procedure, as such the 'law' that emerges thereafter is not an 'ordinary legislative law' but a 'Constitutional law' not subject to article 13, for one should look to the quality and nature of what is done under article 368 and not lay so much stress on the similarity of the procedure contained in article 368 with the procedure for ordinary law-making, and

(*b*) What Courts can see is whether the procedure provided in article 368 has been followed, for if that is not done the constitution cannot stand amended in accordance with the terms of the Bill. But if the

> procedure has been followed *the Constitution stands amended in accordance with the terms of the Bill,* and there is no question of testing the amendment of the Constitution thereafter on the anvil of fundamental rights or in any other way, as in the case of ordinary legislation.

(*ii*) The major premise of the second view came to be expressed by the Supreme Court per Sinha, C.J. in *State of West Bengal* v. *Union of India,* who, after distinctively pointing out the historical process of the transfer of legal sovereignty in India, took the view that the legal sovereignty in India resides in the people and, therefore, the limits of the federation to whom specified legislative powers have been given cannot be regarded as sovereign in that respect. The conclusion of this view was expressed 13 years ago by Sastri, J. in his separate opinion in *Gopalan* v. *State of Madras.*

> There can be no doubt that the people of India have in exercise of their sovereign will as expressed in the Preamble adopted the democratic ideal which assures to the citizens the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality and in delegating to the legislature, the executive and the judiciary their respective powers in the Constitution reserved to themselves certain fundamental rights so called, I apprehend, because they have been retained by the people and made paramount to the delegated powers, as in the American model.

In the same breath the learned judge pointed out that though the high purpose and spirit of the Preamble as well as the constitutional significance of a declaration of fundamental rights should be borne in mind so as not to stretch the language to square with this or that constitutional theory, the spirit, no less than its intendment, should primarily be collected from the natural meaning of the words used.

On a stricter interpretation of the text of the relevant provisions of the Constitution, Hidayatullah, J. and Madholkar J., disagreed with the majority view expressed by Chief Justice Gajendragadkar in *Sajjan Singh* v. *State of Rajasthan* and required more reasons than those given in *Shankari Prasad's* case to agree

with their construction of articles 13 and 368 as to their relative impact upon each other. According to Hidayatullah, J.,

(1) The Preamble to the Constitution is to be likened to the American Declaration of Independence rather than the preamble of their Constitution; as such it is, though not a part of the Constitution, a key to the mind of the Constitution-makers and gives a direction and purpose to the Constitution, which are referred to in Parts III and IV of Constitution;

(2) Article 13 is absolute in rendering void laws, inconsistent with the fundamental rights which being constitutional assurances were not meant to be the playthings of a special majority, otherwise it would mean that the door is always open for bringing back to life all the laws invalidated under article 13(1) and (2), and reverse the policy of our Constitution, from time to time, by legislating with a bigger majority at any given time not directly but by Constitutional amendments and that the Constitution gives so many assurances in Part III that it would be difficult to think that they were the playthings of a special majority. To hold this would mean *prima facie* that the most solemn parts of our Constitution stand on the same footing as any other provision. The anomaly that article 226 should be somewhat protected but not article 32 must give us pause. Article 32 does not erect a shield against private conduct but against state conduct including the legislatures.

(3) The ambit of the word 'law' in article 13 should be ascertained.

(4) Exceptions to the fundamental rights show that Part III is not static and that is visualised change and progress but at the same time it preserves individual's rights. There is hardly any measure of reform which cannot be introduced reasonably the guarantee of the individual liberty notwithstanding; and that

(5) The words of article 368, explicit as they are, do not give power to amend 'any provision' of the Constitution and 'this Constitution' does not mean each and every article wherever found and whatever its language and spirit.

What article 368 does is to lay down the manner of amendment and the necessary conditions for the effectiveness of the amendments.

To these was added one more reason by Mudholkar, J.:

(6) There are certain fundamental and basic features of the Constitution, e.g. democratic and republican form of Government etc. Every member of Parliament is under an oath or affirmation of true faith and allegiance to the Constitution. If upon literal interpretation of article 368 an amendment even of the basic features of the Constitution is made possible, it will be a question for consideration as to how to harmonise the duty of allegiance to the Constitution with the power to make an amendment to it. It is a question fo paramount importance to the citizens of our country to know whether the basic features of the Constitution under which we live and to which we owe allegiance are to endure for all time or at least for the reasonable future—or whether tyey are no more enduring than the implemental and subordinate provisions of the Constitution.

Golak Nath's Case

The Majority View: The conclusions and the reasoning of the majority judgments delivered by Chief Justice Subba Rao (for self, Shah, Sikri, Shelat and Vaidialingam, JJ.) in *Golak Nath's* case could be summarised thus:

(1) The fundamental rights have to be viewed in the general context of the Constitution. The Preamble to the Constitution is not a mere platitude. The means of realising the principles enshrined in the Preamble are worked out in detail in the body of the Constitution and every authority-executive, legislature and judiciary established by the Constitution— is subject to them. The Constitution which is supreme has empowered the legislatures to make laws and in Part IV prescribed the objectives which are to remain fundamental in the governance of the country. Since the Constitution-makers feared that uncontrolled and unrestricted power

in the hand of the government might lead to an authoritarian state, they ordained a higher judiciary which was to act as the sentinel of the fundamental rights of the individual and as the balancing wheel between individual freedom and social control. The Rule of Law under the Constitution was designed to serve the needs of the people without infringing their rights. Every institution or political party that functions under the Constitution must accept it. Otherwise it has no place under the Constitution.

(2) The fundamental rights are natural rights or moral rights which every human being, because he is rational and moral, everywhere, and at all times, ought to possess. They are the primordial rights necessary for the development of human personality. In these, the Constitution has included the right of the minorities, untouchables and other backward communities. The Constitution enjoins the State not to make laws which take away or abridge these declared rights. They are subject only to the limitations contained in the respective articles. This gives fundamental rights a transcendental position and takes them beyond the reach of Parliament. The fundamental rights and directive principles constitute an integrated scheme forming a self-contained code. The scheme is made so elastic that all the directive principles of state policy can reasonably be enforced without taking away or abridging the fundamental rights, subject to social control. The Constitution itself provides for the suspension or the modification of fundamental rights under specific circumstances, e.g. articles 33, 34, 35, 358 and 359. This suggests the conclusion that under no other circumstances the state can take away or abridge fundamental rights.

(3) Article 368 does not confer any power to amend the Constitution. It essentially prescribes, as is evident from its marginal note, various procedural steps in the matter of amendment. The power to amend the Constitution cannot be read in article 368 by implication because whenever the Constitution sought to confer such a power on any authority it expressly said so, e.g. articles

4 and 392. There is no necessity to resort to the doctrine of implied power when Parliament is vested with expressly stated plenary powers to make any law, including the law to amend the Constitution, under articles 245 and 248 read with Entry 97 of List I.

The fact that there are other conditions such as a larger majority and, in the case of articles mentioned in the proviso, a ratification by State legislatures, does not make the amendment any the less a law and the amending agency a different body. The imposition of further conditions is only a safeguard against hasty action and a protection to the States. Articles 2, 3, 4 and 169 provide for passing of laws by Parliament to amend the Constitution and declare that 'laws' so passed would not be amendments of the Constitution for the purposes of article 368. This shows it would be an amendment within the meaning of article 368.

In support of this proposition two decisions of the Privy Council in *Mc Cawley* v. *the King* and *Bribery Commissioner* v. *Pedrick Ranasinghe* dealing with a similar question relating to the Constitutions of Australia and Ceylon, respectively, were cited. Illustrations from the foreign Constitutions which differentiate amending process from the legislative Process are immaterial in construing the provisions of our Constitution. The nature of amending power generally depends upon the nature of polity created by the Constitution, e.g., federal or unitary, written or unwritten, or rigid or unrigid, and the spirit and genius of the nation in which that Constitution has its birth. The power to amend need not be absolute, for it is left to the Constitution-makers to impose restrictions thereon and prescribe the scope of the power and the method of amendment having regard to the requirements of the particular State.

(4) The 'law' in its comprehensive sense includes constitutional law and the 'law' amending the Constitution is constitutional law. Article 13(2) gives an inclusive definition of the word 'law'. It does not exclude and, in fact, *prima facie* takes in constitutional law.

(5) It cannot be said that if fundamental rights can not be amended it would prevent Parliament from enforcing the directive participles and this would lead to revolution. Fundamental rights are introduced exactly to prevent this attitude of Parliament and the Constitution-makers thought, and the majority of the Court agreed, that the directive principles could be reasonably enforced by Parliament within the self-regulatory machinery provided by Part III. Parliament's verdict on the scope of the law of social control of fundamental rights is not final but justiciable. Secondly, history shows that revolutions are brought about not by the majorities but by the minorities and sometime by military coups. The existence of an all comprehensive amending power cannot prevent a revolution if there is chaos in the country brought about by misrule or abuse of power; and
Thirdly, this construction of the amènding power does not make the Constitution unchangeable even in respect of the fundamental rights—when the whole country demands such a change. For such a contingency the residuary powers of Parliament under articles 245 and 248 read with Entry 97 may be relied upon to call for a Constituent Assembly or Convention or hold Referendum analogous to the opinion poll held in Goa, Daman and Diu, since under the scheme of our Constitution the remaining Constituent sovereignty, which is contained in the Preamble and Part III, is in abeyance because of the curb placed by the people on 'the State' under article 13(2).

(6) The agrarian structure of our country has been revolutionised on the basis of correctness of the decisions in *Sankari Prasad's* case and *Sajjan Singh's* case. To give the present decision retrospectivity would be to introduce chaos and unsettle the conditions in the country. At the same time to hold, because of these consequences, that Parliament had power to take away fundamental rights would be passing gradually and imperceptibly under a totalitarian rule. As the highest Court of the land we must evolve some reasonable

principle to meet this extraordinary situation. In America the doctrine of prospective overruling is now accepted in all branches of law, including Constitutional law, but the carving of its limits are left to the courts having regard to the requirements of justice. If a court can overrule its earlier decision there cannot be any valid reason why it should not restrict its ruling to the future and not to the past. The doctrine does not do away with the doctrine of *state decisis*, but confines it to past transactions. While in strict theory it may be said that the doctrine involves making of law, what the court really does is to declare the law but refuses to give retroactivity to it. It enables the court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors of past transactions.

The Constitution does not speak against the doctrine of prospective overruling. Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable the court to formulate legal doctrines to meet the ends of justice. The expression 'declared' in article 141 is wider than the words 'found or made'. To declare is to announce 'opinion'. The latter involves the process, while the former expresses the result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as 'law'. In declaring law the court has the power to restrict the operation of the law declared. To deny this power to the court on the basis of some outmoded theory would be making ineffective the powerful instrument of justice placed in the hands of the Court.

Since the doctrine is being applied to our country for the first time we should move warily in the beginning and lay down that

(*i*) the doctrine can be invoked only in matter arising under our Constitution;

(*ii*) it can be applied only by the Supreme Court; and

(*iii*) the scope of the operation of the doctrine is left to the Supreme Court's discretion to be moulded in accordance with justice of the cause or matter before it.

As such on the application of the doctrine to the case the First, Fourth and Seventeenth Amendments will continue to be valid and the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights.

Hidayatullah J., as he then was, delivering a separate judgment *inter-alia* made the following points:

(1) The Court in *Sankari Prasad* and *Sajjan Singh's* cases reached the result by a mechanical jurisprudence in which harmonious construction was taken to mean that unless article 368 itself made an exception the existence of any other provision indicative of an implied limitation on the amending power could not be considered. It was based on *'a priori'* view of the omnipotence of article 368, a doctrinaire conceptualism based on an arid textual approach supplemented by one concept. No part of the Constitution is superior to another part unless the Constitution itself says so. On the answer to the question of reconciling article 368 with article 13(2) depends the solution of all the problems in this case.

(2) Our Constitution is much more than an organisational document because it aims at being a social document in which the relationship of society with the individual and of government to both and the rights of minorities and backward classes are clearly laid which the Government is bound to protect, expanded into fundamental rights and directive principles. The former are protected and represent the limits of State action but the latter, which are obligations and the duties of the Government, are not. The Constitution was not the cause but the result of political and personal freedom.

(3) The definition of the word 'law' in article 13(2) makes no exception to 'constitutional law.' Though a distinction between 'constitutional law' and 'law' is made, as in the U.S.A., it is not always essential, as in

England. The Constitution itself has considered some of the ordinary laws (laws made under articles 327 or 328) as constitutional laws. The distinction does not exist if the legislative and constituent processes become one. The view held in the U.S. on this distinction is not final because the process of amendment in the U.S. is not a legislative process and there is no provision like our article 13(2). This apart, there is nothing to prevent the State from limiting itself and this we find in article 13(2). The State is, no doubt, legally supreme but in the supremacy of its powers it may create impediments on its own sovereignty. Though the Government is always bound by the restrictions created in favour of fundamental rights but the State may or may not. The State means more than any of its functionaries such as Government, Parliament, Legislatures, local and other authorities, or all of them put together in article 13(2), which subjects the State to fundamental rights, controls the agencies of the State jointly and separately and its prohibition is against the whole force of the State, acting either in its executive or legislative capacity. In other words the declarations of the fundamental rights are the inalienable rights of the people and the Constitution enables an individual to oppose successfully the whole community and the State and claim his rights. Therefore, if an amendment of the Constitution is a 'law', such an amendment is open to challenge under article 32, if it offends against the fundamental rights by abridging or taking them away. Of course, it is always open to better fundamental rights. As such the unlimited competence does not flow from the amendatory process. Amendments then can be by a fresh constituent body.

(4) Article 368 outlines a process, which, if followed strictly, results in the amendment of the Constitution. The article gives power to no particular person or persons. All the named authorities have to act according to the letter of the article to achieve the result. The procedure of amendment, if it can be called a power at all, is a legislative power but it is *sui generis* and outside the

three lists in Schedule Seven of the Constitution. It does not have to depend upon any entry in the lists.

(5) The liberty of the individual under our Constitution, though meant to be fundamental is subject to such restrictions as the needs of society dictate. These are expressly mentioned in the Constitution itself in the hope that no further limitations would require to be imposed at any time. The possession of the necessary majority does not put any party above the constitutional limitations implicit in the Constitution. The Constituent Assembly, in making the fundamental rights justiciable, was not satisfied with reliance on the sense of self-restraint or public opinion on which the majority in *Sajjan Singh's* case does. The Parliament today is not the constituent body as the Constituent Assembly was, but is a constituted body which must bear true allegiance to the Constitution. To act otherwise would be to usurp the function placed outside the pale of its authority.

(6) There is no antinomy between the directive principles and fundamental rights. The former lay down the routes of State action but such action must avoid the restrictions stated in Part III and it cannot be conceived that in following the directive principles the fundamental rights can be ignored. If it is attempted, the action is capable of being struck down.

(7) It cannot be said that the approach adopted here would make society static, rob the State of its sovereignty and leave revolution as the only alternative if change becomes necessary. The whole Constitution is open to amendment; it is only two dozen articles that are kept outside the reach of article 368, because they are made fundamental. When the people elect the Parliament and the Legislatures, they exercise their electoral sovereignty which includes some constituent sovereignty also, but only in so far as it is conceded. A legal method for Parliament to reach the fundamental rights is that the State must reproduce the power which it has chosen to put under a restraint by calling convention or a constituent body. Parliament must amend article 361 to convoke another Constituent Assembly, pass a law

under item 97 of List I to call a Constituent Assembly, and then that Assembly may be able to abridge or take away the fundamental rights, if desired.

(8) The First, Fourth and Seventh Amendments being part of the Constitution by for a long time, cannot now be challenged and they contain authority for the Seventeenth Amendment. A constitution works only because of universal recognition which may be voluntary or forced.

Justice Hidayatullah, therefore, held:

(*i*) that the fundamental rights are outside the amendatory process if the amendment seeks to abridge or take away any of the rights;

(*ii*) that *Shankari Prasad's* case (and *Sajjan Singh's* case which followed it) conceded the power of amendment over Part III of the Constitution on an erroneous view of articles 13(2) and 368;

(*iii*) that the First, Fourth and Seventh Amendments, being part of the Constitution by acquiescence for a long time cannot be challenged and they contain authority for the Seventeenth Amendment;

(*iv*) that this Court having now laid down that fundamental rights cannot be abridged or taken away by the exercise of amendatory process in article 368, any further inroad into these rights as they exist today will be illegal and unconstitutional unless it complies with Part III in general and article 13(2) in particular;

(*v*) that for abridging or taking away fundamental rights, a constituent body will have to be convoked; and

(*vi*) that the two impugned Acts, namely, the Punjab Security of Land Tenures Act, 1953 (X of 1953) and the Mysore Land Tenures Act, 1953 (X of 1953), as amended by Act XIV of 1965, are valid under the Constitution not because they are included in Schedule 9 of the Constitution but because they are protected by article 31A and the President's assent.

These conclusions and the supporting reasoning led the majority of the Court to overrule its decision in *Shankari Prasad Deo* v. *Union of India* and *Sajjan Singh* v. *State of Rajasthan* which had held that: (*i*) though the fundamental rights have been made immune from State

interference and that in the context, 'State' did not mean the body exercising constituent power, and (*ii*) if it was to be otherwise it was easy for the Constitution-makers to make that intention clear by adding a Proviso to that effect in article 368. By applying the doctrine of harmonious construction to the widely phrased articles 368 and 15(2), the Court had held, in these two cases, that the term 'law' in article 13 must be taken to mean laws, bye-laws, rules, regulations, etc., made in the exercise of ordinary legislative power and not amendments to the Constitution, and that in any case, immutability of Part III cannot be sustained in the face of Parliament's power to amend article 368 itself. This was supported by the minority view in *Golak Nath's case.*

The Minority View: The minority view was that the power of amendment conferred on Parliament included the power to amend the fundamental rights so as to take them away or abridge them. Giving the main dissenting Judgment, Wanchoo J., as he then was, held:

(1) The power to amend the Constitution is conferred upon Parliament by article 368 and not by article 245 or 246 or 248.The power so conferred is not limited either expressly or by implication.

(2) An amendment to the Constitution is a constitutional law made in the exercise of constituent power which is not the same as ordinary legislative power under which laws are made.

(3) The cases of *Shankari Prasad* and *Sajjan Singh* were decided correctly and while article 13(2) prohibits a law abridging or taking away the fundamental rights, it does not restrict the constituent power given by article 368 to amend any part of the Constitution including the fundamental rights. The word 'law' does not apply to amendments of the Constitution.

(4) The power to amend the Constitution means that any part of it can be changed to such an extent as the sovereign body deems fit.

Reactions to the Decision

The majority view of the nature of fundamental rights *vis-a-vis* amendatory power of Parliament taken in *Golak Nath's* case has

evoked both criticism and approbation. Those who criticize the Court's verdict hold, with varying degrees of emphasis, that the Supreme Court appears to have:

(*i*) discarded the intention of the Founding Fathers by reading into the Constitution its own political philosophy reminiscent of the 19th century *laissez faire* philosophy and has registered its own supremacy, in playing the role of the protector and sentinel of the fundamental rights, over the Constitution and those institutions established by it to exercise that supremacy, in other words, it has placed itself over the Constitution;

(*ii*) mooted a dangerous proposition that the ultimate sovereignty, individual *qua* state, not only political but also legal, resides in the people, which would come to be exercised by devising extraconstitutional machinery or methods, e.g., referendum, initiative, *ad hoc* Constituent Assembly etc.;

(*iii*) reversed the constitutional order acquiesced by practice and created juridical instability by treating earlier precedents some-what lightly;

(*iv*) attempted to retread the path which the U.S. Supreme Court had forsaken as far back as in the thirties; and

(*v*) ascribed static and rigid element to the Constitution which was in reality intended to be dynamic and purposive, to subserve always the interest and welfare of the general public.

On the other hand those who hail the judgment hold that by this judgment the Supreme Court has:

(*i*) imposed a necessary limitation on the power of Parliament to amend the Constitution which had come to be exercised rather indiscriminately;

(*ii*) also adhered to the language and the text of the Constitution faithfully;

(*iii*) restored confidence in the minorities (linguistic, cultural, religious, economic, social, etc.) that the fundamental rights guaranteed to them as a result of political settlement arrived at in the Constituent Assembly are, in essence 'fundamental' and can never be the playthings in the hands of the majority;

(*iv*) convinced the people that the trust reposed in the Court as a guarantor and protector of individual's fundamental rights by the Founding Fathers was not an exercise in futility; and

(*v*) by giving the judgment 'prospective operation' protected the economic and social order created by the majority in accordance with their understanding of the Constitution with the concurrence of the earlier Benches of the Supreme Court.

The Nature of the Judicial Process: Issues and Approaches

In arriving at the conclusion that the power to amend the Constitution cannot be read in article 368 which only lays down procedure for amending the Constitution and that this power under articles 245 and 248 read with article 368 or the power in article 368 which is only a legislative power *sui generis* outside the three lists in Schedule Seven, cannot be exercised in such a way as to take away or abridge fundamental rights, since the law amending the Constitution is a 'law' within the meaning of article 13(2), the Supreme Court by a majority of 6:5, in *Golak Nath's* case, overruled its own unanimous decision in *Shankari Prasad Deo* v. *Union of India* and majority (3:2) decision in *Sajjan Singh* v. *State of Rajasthan* and gave it prospective operation, adopting a different process of reasoning. It rendered value judgments quite distinct from the values subscribed to on earlier occasions. The judgment holds out three salient features or methods of judicial process. They are: overruling, prospectivity and approach.

(*i*) *Overruling and approach:* The conflict in the Court's views in the *Shankari Prasad* and *Golak Nath's* cases proceeds from the difference in approach and relatively greater emphasis on one object in one case and another in the other. A reference to the Constituent Assembly debates and other preparatory documents would not be decisive in resolving this controversy. The Framers spoke of these poles-apart concepts in absolute terms in separate context, without scrupulously adverting to the impact they would have on each other if allowed to expand to their possible limits. In *Shankari Prasad* and *Sajjan Singh's* cases the Court, finding conflict between article 13(2) and article 368, applied the

doctrine of harmonious construction and by presuming that in imposing the prohibition of article 13(2), the Framers must have had in mind what is of more frequent occurrence, i.e., invasion of the rights of the subjects by the legislative and executive organs of the State, and not by the exercise of sovereign constituent power, rendered the value judgment that the word 'law' in article 13(2) though very widely phrased, in the context, should be read subject to the inherent power to amend the Constitution that lay in the bodies named in article 368. The fact that the Framers themselves acting as the Provisional Parliament, resorted to this power for passing the Constitution (First Amendment) Act, 1951 can be assumed to have had its decisive influence in making the Court introduce such a reading in between the gaps inadvertently left unplugged by the Framers. The conclusion of the Court that article 13(2) should be read subject to article 368 was deliberate though in *Sajjan Singh's* case an attempt was made to fit it in the phraseology of article 368. The rule so laid down was received and acted upon by the other organs of the State for 16 years creating, modifying, extinguishing or alienating the innumerable rights of the individual *inter se* or *vis-a-vis* the State or Society as to which the Court even in *Golak Nath's* case did not take any effective exception.

It is true that the absolute power to amend the Constitution so conceded by the Court was resorted to too frequently and had formidable consequences in nullifying some of the major decisions of the Supreme Court, involving interpretations of the constitutional provisions, more particularly those relating to the fundamental rights of which the Court was constituted a guarantor and protector. The emergent position was the working of parliamentary supremacy or legislative supremacy in disguised form. The question was whether by conferring such an absolute power the Constitution could be deemed to have contained self-defeating or self-destructive provisions. This factor was highlighted in the Court's estimation in *Golak Nath's* case and doubt was entertained whether the fundamental rights could ever be fundamental if they were made a plaything in the hands of the majority. In encountering such an apprehension, it should not have been lost sight of that even though the Framers in drafting the property provisions failed to assure themselves

that it unmistakably carried their intention as to the concept of property right and its extent in the context of the predominant social interest they thought to introduce in it, different means were still open to the Supreme Court to construe it in consonance with the directive principles which are addressed as much to the Court as to the Legislature and Executive, for, the inclusive definition of the word "state" in article 12 read with article 36 covers the Supreme Court. Thus Hidayatullah J. was led to remark: "all would have been well if the courts had construed article 31 differently." The alternative was open to the Court but it did not prefer to seize it. The judicial process is a creative instrument and has immense potentiality to be geared in furtherance of the objectives of the Constitution (so also of other laws). There was a case, in fact, to hedge the sovereign prerogative to interpret the Constitution, to declare what the law of the land is and pass such decree or make such order as would do complete justice in the pending cause or matter, by the considerations of the objectives of the Constitution. The rigid adherence to the Enghlish literalist process that words speak everything that they were intended to convey, led the Court to sow the seed for the present dichotomy. No one may quarrel with the Court's view that the directive principles are capable of being translated into reality without taking away or abridging the fundamental rights, as this was also the intention of the framers. It could be done only by assigning to them the scope intended by the framers. It certainly could not be done when the Court placed undue emphasis on and read wider scope even in those fundamental rights that impinged drastically the scope of the directive principles. The Parliament should not be blamed, if, to counteract the imbalance thus created, it proceeded with a pace not desired of a body subjected to the order postulated by the Constitution.

The major premise of the Court that the fundamental rights being the bedrock of the political existence of the people have been given a place of permanence in the scheme of the Constitution and in giving to themselves the Constitution the people have reserved the fundamental freedoms to themselves expressed in article 13 (which should not be taken as protecting the right) is supported by the Court's opinion in *State of West Bengal* v. *Union of India* that the historical process of the transfer

of legal sovereignty in India has been such that the legal sovereignty has come to reside in the people and not the Units of the Federation to whom specified legislative powers have been given by the Constitution. The Constituent Assembly had extra legal or political origin, deriving its mandate from the people of India through different types of representative groups. The extent of the mandate being of an unspecified nature, when the Constituent Assembly, in pursuance of the legal power conferred on it subsequently by the British Parliament to frame a Constitution for the Dominion of India, adopted the Preamble in the name of the people of India, it can be taken ot have recognised the fact that its legal sovereignty, in terms of its unspecified mandate, belonged to the people. Viewed against this background it would be obvious that the full force of article 13 read with article 12 covers every conceivable authority functioning under the Constitution and that the residual sovereignty vests in the people.

With a view to effectuate a change in the hitherto established proposition that Parliament's constituent power was of absolute nature, the majority of the court in *Golak Nath's* case emphasised the inclusive definition of the word 'law' in article 13 and, of 'State' in article 12 and referred to the higher order postulated by the Preamble. The Court said that Parliament, acting in any capacity, is not above the Constitution but always subject to it. The ambit of article 368 was restricted to that of laying down the procedure for amending the Constitution or that it is only a legislative power. The Court refused to be persuaded to bring to bear on its construction the absolute scope assumed by the constitution-makers (which was expressed during the debates in the Constituent Assembly in this context but was not made explicit in the phraseology of article 368) and expressed by overt conduct, while functioning as Provisional Parliament, when they enacted the Constitution (First Amendment) Act,1951.

It may by pointed out here that while the Court referred to the legislative history of the fundamental rights to compute the degree of importance attached to them by the Framers, it failed to refer to the legislative history of article 368. Perhaps, this happened merely because the value judgments of the Court in *Shankari Prasad* and *Sajjan Singh's* cases were not akin to the six judges' concept of the hierarchy of values of the constitutional

order. They based their construction on the relative scope of articles 13 and 368 that suited their philosophy. If they could do this today, they being in majority, the judges of other preferences, gaining majority subsequently, can as well undo it and superimpose their own values. Should the values of the constitutional order change so often as there is change in the Court's composition, the concept of the permanency of the Constitution would become meaningless.

(*ii*) *Prospectivity*: Having decided to take a contrary view of the fundamental rights *vis-a-vis* the constituent power, five out of the majority of six judges were confronted with the problems:

The agrarian structure of our country has been revolutionised on the basis of the said laws (*i*.e., agrarian reform laws passed on the correctness of the decision in *Shankari Prasad* and *Sajjan Singh*), should we now give retrospectivity to our decision it would introduce chaos and unsettle the conditions in our country. Should we hold that because of the said consequences Parliament had power to take away fundamental rights, a time might come when we would gradually and imperceptibly pass under a totaliarian rule.

The judges did not desire any of these consequences to flow from their decision. They could see them averted in the adoption of the doctrine of "prospective operation' well known to American jurisprudence but alien to English jurisprudence. Under the doctrine the future is protected while preserving the past. The five judges negatived the objection that the doctrine invlolved legislation by courts for the reason that while in the strict theory it may be said that the doctrine involves making of law, what the court really does is to declare the law but refuses to give retroactivity to it. It is really a pragmatic solution reconciling the two conflicting doctrines, namely that a court finds law and that it does make law. If it finds law but restricts its operation to the future, it enables the court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. it is left to the discretion of the court to prescribe the limits of the retroactivity and thereby it enables it to mould the relief to meet the ends of justice.

It is within the absolute province of the Court to pass such decree or make such order as is necessary for doing complete

justice in the pending cause or matter under article 142 (1) and it can opt to bring the doctrine of 'prospective operation' in its jurisprudence. But does it fit in the scheme of our Constitution? In a different context the Court has held the view that the constitutional provisions in Part III are not merely checks but to go to the root of the power and that a statute void for unconstitutionality is dead and cannot be vitalised by removing the constitutional objection. Applying this principle to *Golok Nath's* case the Constitution (Seventeenth Amendment) Act, since it violated article 13(2) should be void *ab initio*. Exactly opposite conclusion was reached by applying the doctrine of 'prospective operation'. It would mean, therefore, that in the light of the Court's holding as to the nature of the article 13(2)'s inhibition, the adoption of the 'prospective operation' theory in adjudicating cases under article 13(2) is inappropriate. The judges advocating the adoption of this theory did not advert to this anomalous position. If the injunction of article 13(2) goes to the root of the power of the State under the Constitution, the Supreme Court, included as it is in the term 'State' can be said, with respect, to have acted, in adopting the prospective operation theory, in excess of it constitutional propriety. This conclusion might establish firmly the doctrine of *Stare Decisis* with its attendant evil in our country but it is the logical outcome of the Court's decisions in *Behram Khurshid* and others.

Secondly, in the adoption of the doctrine of prospective operation the Court, by its own logic, may be said to have surrendered the fundamental rights of the individual to that extent. It is intriguing to say in one case that the Court as a sheet anchor of the individual's fundamental right cannot see them being waived by the individual himself in favour of the state and in another, with a view to accommodate the catena of unconstitutional State Acts, surrender the fundamental rights by itself.

The antidote suggested by the Court to the rigidity introduced there by in respect of fundamental rights, i.e. convening of *ad hoc* Constituent Assembly, Convention, Referendum or Initiative is too omnibus to put in practice with precision

The mere fact that an amendment is passed by the constituent Assembly or Convention or in a Referendum or

Initiative would not been enough. It would still justiciable and can be struck down by the Court. It might be possible for the Court, as constituted at a given time, to regard the process of such constitutional amendments as an extra-constitutional fact not amenable for judicial review.

Then there is the important question raised by Shri N.C. Chatterjee, M.P. in his letter to the President—"If Parliament cannot directly take away or abridge a fundamental right, how can it authorise its agent to do so merely by calling 'Constituent Assembly.' The so-called Constituent Assembly created under a law made by Parliament will only be a constituted body and cannot be raised to the status of a Constituent Assembly."

Points for Consideration

(1) If the principle of Constitutional Law laid down in *Golak Nath's* case is considered judicially or politically desirable or timely and is acceptable:

(*a*) What should be the composition of the machinery and the manner of carrying the amendments through the Constituent Assembly or Convention or Referendum or Initiative which would satisfactorily implement the essence of the idea that pervades the majority judgment in *Golak Nath's* case?

(*b*) Will it not be necessary to introduce there in the concept of the vital interest of the community in general as opposed to a section or sections, either large or small in the composition and procedure of such a machinery; if so to what extent?

(*c*) Should the principle of Constitutional law in *Behram Khurshid, Saghir Ahmed* and other cases be reconsidered by the Court as it is in direct conflict with the principle in *Golak Nath's* case? If not, what could be the points for distinguishing them?

(*d*) Is it not necessary that whenever the Court deliberately pronounces a value judgment interpreting the Constitution it should not subsequently disturb the order so established even though there might be other logical reasons suggesting a contrary view? Since its pronouncements affect the entire constitutional order,

should it not impose self-limitations on its absolute discretion in declaring the law, interpreting the Constitution and passing any order to do complete justice in the pending cause or matter? Should it not be desirable or necessary to impose such limitations on the Supreme Court's powers?

(*e*) For unsettling the established constitutional order or interpretation, should a decision by 2/3 or 3/4 majority of the Court not be insisted upon by effecting a suitable amendment in that regard?

(*f*) To what other fundamental provisions of the Constitution the protection of the rule in *Golak Nath's* case be allowed to extend?

(2) On the other hand, of the principle of constitutional law in the *Golak Nath* case is not acceptable, being reminiscent of 19th century *laissez faire* philosophy and unsuitable to the fast developing needs of the new emerging India, there area at least two ways open:

(*a*) Parliament may amend article 368 so as to clearly lay down therein that Parliament has the power to amend all the articles of the Constitution including fundamental rights notwithstanding anything contained in any other part if the Constitution;

(*b*) It is open for the Court to review its judgment in *Golak Nath's* case. It can be done expeditiously on a reference being made by the President under article 143 or by re-agitating the matter in an appropriate case.

Should the Court decide to revert to the earlier constitutional order, further thought need be given to making it difficult for Parliament to tamper with the fundamental rights lightly, by providing that:

(1) the ratification by 3/4 of the number of States would be necessary for all amendments affecting fundamental right; and or

(2) that a constitutional amendment taking away or abridging the fundamental rights passed by Parliament constituted after the next general election?

Public interest appears to be concerned with: (1) the validity or feasability of the alternative forms of amendment of fundamental rights that are implied in the judgments, viz., a

Constituent Assembly; (2) whether article 368 of the Constitution could be amended to clarify that Parliament may amend the Constitution so as even to abridge or take away a fundamental rights: and (3) whether the issues should be reconsidered by the Court itself on a Presidential Reference under article 143?

In any case where a remedy is sought, one must be certain as to for what purpose it is needed, otherwise the cure may prove worse than the malady. Significantly in the debate as to the merits of the respective courses open, none of the protagonists of one or other suggested course, has been able to specify a specific objective. Thus, before there could be a Presidential Reference, the President in the first place, and the Supreme Court thereafter, would need to know as to what particular fundamental right or rights it was proposed to abridge or take away: thus the pursuit of the directive principles towards a new social order may not call for the abridgement or repeal of the prohibition of traffic in human beings and forced labour or he freedom of conscience, and belief.

The fundamental rights may now be grouped in three categories:

First, rights such as those expressed in article 19 (freedom of speech, association, assembly, residence, movement within the Territory of the Union, and vocation etc.) in which the States' rights to impose restrictions on the exercise of the rights conferred is already provided for. In the same category may be placed rights to life and personal liberty under article 21, subject to procedure established by law. Thus, to hang black marketeers in Chandni Chowk would only need an amendment of the Criminal Procedure Code and the Penal Code.

Second, rights in regard to which there have been abridgement by Constitution Amendment Acts, which were held valid by erstwhile decisions relate primarily to rights to property abridged in the pursuit of an alleged, but presently inchoate, social order.

Third, rights which fall outside the above two categories, such as equality before the law (article 14), prohibition of discrimination on the ground only of religion, race, caste etc. (article 15); abolition of untouchability (article 17); equal opportunities in matters of public employment (article 16); freedom of conscience and freedom to profess, practice and

propagate any religion (article 25); prohibition of traffic in human beings and forced labour (article 23); and rights of minorities to conserve their distinct language and culture of their own (article 29); and to administer educational institutions of their choice (article 30).

It is well to bear in mind that the rights classified as fundamental and falling within the third category above mentioned, in regard to which there is no express provision for abridgement or repeal, fall generally within the ambit of the "Universal Declaration of Human Rights" and correspond in particular to the rights declared in articles 1, 2, 3, 4, 5, 7, 9, 13, 18, 19, 20, 21, 22 and 29 of the Declaration, which was adopted by the General Assembly of the United Nations and to which adoption India was a party. Some of the rights relating to minorities also fall within the guarantees contained in the 'Genocide Convention', an international treaty subscribed to by over sixty nations including India. Both the "Declaration of Human Rights" and the "Genocide Convention" preceded the adoption of the Constitution in November, 1949, and the Constitution must be read in the terms of the qualifications to absolute sovereignty' voluntarily surrendered by a free India, to enable her to sit in the comity of civilised nations and could not be unilaterally denounced without exciting international issues.

It is also well to recall that one of the first acts of the Constituent Assembly was to adopt unanimously, or near unanimously, the new virtually forgotten "Objectives Resolution" of December 13, 1946, which its sponsor Prime Minister Nehru, declared as embodying rights and safeguards of the liberties of the citizen and of the minorities, eternal in character and as an act of faith with posterity.

There is, thus, good meaning why Part III of the Constitution, embodying the rights declared as fundamental rights, did not find a place in article 368, and its several provisions relating to amendments of the Constitution, some requiring only a two-thirds majority and others a ratification by the States as well (generally referred to as the 'entrenched' provisions). Fundamental rights, especially those of a "universal" or "eternal" character were, it appears, deliberately omitted from article 368, in order to preserve such rights as equality before the law, and the abolition of untouchability etc., not merely for a time but

for all time. Any amendment, therefore, of article 368 to include "Fundamental Rights" within the general procedure for amendment would be contrary to article 13 (2) and would be void.

The five Justices, constituting the Minority, in the *Golak Nath* case did not speculate on the means by which the provisions in Part III of the Constitution could be amended as, in their opinion, article 368 not only includes the process but also the power to abridge or take away any of the fundamental rights. Six of the eleven Judge, however, took a contrary view, which is undoubtedly the rights view. In the view of the majority, the only process by which fundamental rights can be abridged or withdrawn is by a Constituent Assembly convened for the purpose, which in any event would be for "an extremely unforseeable and extravagant demand", and if such a contingency should arise, "the residuary power of Parliament may be relied upon to call for a Constituent Assembly for making a new Constitution or radically changing it."

To convene a Constituent Assembly is easier said than done. The last Constituent Assembly was a product of British ingenuity. The members elected to the Central and Provincial Legislatures under the Government of India Act 1935, under the 1945 elections became the Constituent Assemblies for India and Pakistan under the Indian Independence Act, 1947, an Act of the British Parliament. To convene a Constituent Assembly now charged with the duty of framing a new Constitution or radically changing the present one would be in itself a problem of great difficulty. In a country, where illiteracy is still with more than 85 per cent of the people, and millions are still in prevedic civilisation, a referendum in any form, direct or by specific mandate to specially chosen representatives would be forbidding. Even if such an assembly could be brought together, the problems in framing a new Constitution or radically changing the present, would be staggering and would perhaps make for more fearsome chaos than if all the zoos in the country were unlocked simultaneously.

A Constituent Assembly would have to be convened. If so, by what agency or by whom? Parliament in exercise of its residuary powers? But in the light of the Supreme Court decision, Parliament is a "Constituted Body" as distinct from a "Constituent Body". How could a body without requisite power

invest another body with powers greater than it possesses? So it seems evident that Parliament cannot set up a Constituent Assembly. Who else could convene one?

The President? But the President himself is a creature of the Constitution and pledged to maintain it. How could he, consistent with his oath of office, bring into being a body charged to find a new Constitution or to radically change the existing one? Incidently the question of their respective oaths to uphold the Constitution would apply to every member of parliament, and every Minister of whatever rank, and also every State Legislature in the country. Before a new Constituent Assembly could be convened or function a lot of persons would have to be released from their oaths and solemn undertaking.

It is, therefore, difficult to see how a Constituent Assembly can be called unless we are prepared to seek an answer from the recent history of Latin America, or perhaps from our next door neighbours, who have not too badly by scrapping one constitution for another.

No doubt, those who perceive the difficulties of a new Constituent Assembly and yet would like to get rid of the hurdles now in the way of the abridgement of fundamental rights, would settle for a less perilous voyage—a return to the Supreme Court riding a Presidential Reference under article 143 of the Constitution.

A reference under Article 143 has also its own shortcomings:

(1) It is very doubtful whether opinions expressed on a reference under article 143 could override a decision of the Court given under article 141 read with article 145 (5) of the Constitution.

(2) To over-rule a decision of a Bench of 11 judges, it would be necessary to constitute a larger Bench and 13 is the next number. There may be even a few Judges, whose views may overrule them in the matter of sitting in a Bench of 13.

(3) The personnel of the Supreme Court is presently eleven. It may not be difficult to find two more, but what is the guarantee that the new incumbents will dissent from the *Golak Nath* case. When President Roosevelt found his 'Fair Deal' floundering in the Supreme Court of the United States, he made a number of appointments known to support his policies, only to find to his regret that when lawyers go to the Bench they act as Judges and not as politicians.

CHAPTER 3

Social Philosophy of Fundamental Rights

THE whole question arising out of the judgment of the Supreme Court in the *Golak Nath* v. *the State of Punjab* is whether the Parliament is competent to amend fundamental rights in view of the prohibition in article 13(2) and the permission in article 368 to do so. It is precisely a legal *albeit* a constitutional issue which could have been finally settled but for the precariously divided opinion of the Court itself. In fact, prior to his judgment it was taken for granted that in the light of the First Amendment, the Fourth Amendment and the Seventeenth Amendment, which remained unchallenged by the Supreme Court, the authority of the Parliament to undo the effects of judicial decisions was indisputable. In the present case, the majority of judges turned the apple-cart on the Parliament by contending *de novo* that Part III of the Constitution is outside the power of the Parliament to amend. It has taken the view that a gradual erosion of fundamental rights is involved in the amendments to article 31.

Lest we stray into pointless argument, it would be profitable to look straight into the problem not from a strictly legal angle but in the wider context of the social philosophy that guided constitution-making *ab initio*, and its development during the past two decades or so. In this paper I propose to examine the crucial issue of the balance of liberty and social good as relevant to our concept of democracy that has less by accident and more by design been given a fillip in this country by those who mattered.

It may be recalled that the Constituent Assembly's treatment of the due process clause as it affected liberty and property gave the most authentic insight into the members' disposition to the primacy or otherwise of liberty and social transformation. The classic dilemma of how to preserve individual's freedom while at the same time advancing public good seemed to resolve itself. The dominant thinking veered around a theory that sought to compromise the two apparently conflicting ideologies of individualism and socialism. In the ultimate count the balance was made to tilt in favour of the principle of social good assuming that beyond a point the compromise would not stand to test. At least, this was so in relation to article 31, if not for others.

That such a philosophy was essential to a developing society was the point of view sponsored by the leading architects of the Constitution. The Constitution to them was the instrument of social change and not merely a mechanism for political administration. Hence, the utility of the Constitution or any part thereof could be judged by its subservience to this vital end. There was no 'sanctity' of the Constitution beyond this.

Such an idea, whether we like it or not, found expression in most of the utterances during debates on Part III, Part IV, the Preamble and several other provisions besides the discussions over the aforesaid amendments in and out of the Parliament. There is, indeed, a basic philosophy that prerequires our understanding of the slant of 'common good', 'general welfare', 'social interest' given to the prevailing outlook on the subject of Man versus the State. It looked as if T.H. Green was triumphant over Herbert Spencer in the matter of prescribing State obligations towards th citizens.

Not that the judiciary in a liberal State should be dictated by the dominant philosophy of the Constitution: it can have a philosophy of its own for the protection of fundamental rights that have been left to its care. But the question we need ask ourselves is whether in terms of the Constitution is it not implied that in case of a conflict between the judiciary and the Parliament the latter has the final say? Since this involves a big question in itself, we need to bring evidence to bear on it.

The fundamental rights of the Constitution are, in general, those negative obligations of the State that prevent the

encroachments on individual freedom and have been inspired by the U.S. Bill of Rights. But the State, in addition to obeying these negative injunctions must also act positively to protect those very rights from encroachment by society. The fundamental rights are, therefore, vested with a dual function; to protect freedom and to provide social change towards an egalitarian social set up where citizens are not only free from State coercion but also from social exploitation of one form or another. The restriction imposed on 'Fundamental Rights' and the 'Directive Principles of State Policy' are meant to achieve such a goal. The fundamental rights are fundamental not only because they are justiciable but because they are the basic conditions of civilized life; directive principles, though not justiciable, enjoy the sanction of public opinion and are fundamental to the governance of the country. So that we are face to face with two fundamentals of the Constitution and it is the responsibility of the Government *i.e.*, the Parliament, the Cabinet and the Courts, to find continually a middle way between individual liberty and public good in the context of the changing times and situations. That is what will give dynamism to the Constitution.

While Part III predominantly protects or sustains 'the individual', Part IV guards and advances the interests of and 'the common man' merge and their interests coincide. It is only when 'the individual' belongs to the *class* and the common man belongs to the *mass* that a clash of interest in regard to property may arise. And it is in such cases that demands for social justice ensues and the need for public policy is felt. The content of public policy has to be a consideration of general welfare. In this sense the desire for civil rights may not necessarily conflict with the for social justice. For instance, the articles dealing with fundamental rights in each particular case are saddled with restrictions. That is to say, they are self-limiting rights and, therefore, significantly imply a dissolution of the distinction between their positive and negative implications. So that the whole corpus of fundamental rights itself, not to say of their association with directive principles, are tied to a single philosophy which postulates a correspondence or a dialogue between individualism and social control. That social aspect is the over riding consideration is unexceptionable. Like Sir Issiah

Berlin's *Two Concepts of Liberty,* the fundamental rights and directive principles are the two sides of the same coin. Democracy, in fact, bases itself on this twin assumptions.

A wrong question is sometimes put as to which of the two—civil or economic liberty—is basic or prior to the theory of democracy. Actually, the two stand, as it were, on the same horizontal plane, and go together. In common parlance, nevertheless political freedom or civil rights are thought to precede economic freedom. This, at any rate, was the mind behind Mr. Jawaharlal Nehru's Objectives Resolution, the well-known Motilal Nehru Report, the Karachi Resolution of the Congress on Fundamental Rights and Economic and Social Change. The cumulative thought over the years had a marked impact on the Constitution who in turn were convinced of the impossibility of a compartmentalization of rights and principles or policy of social reform. It was in such an intellectual climate of the coexistence of the two concepts that the Constitution took shape.

One need not recall the story of the proceedings of the Constituent Assembly but for the fact of it being the clue to several constitutional issues. There were extraneous circumstances also during the forties like the resurgence of interest in human rights as expressed in the Atlantic Charter, the U.N. Charter, the document produced by the Human Rights Commission. The reaction against the denial of liberty in Germany, Italy and elsewhere could be seen in the sensitiveness with which the Constituent Assembly expressed its own faith in guaranteed rights. The inclusion of fundamental rights being a foregone conclusion, the impetus for the incorporation of directive principles came from the revolution in ideas as exemplified in the works of T.H. Green, the Webbs and Harold Laski amongst others. There were Indian counterparts of these thinkers, persons like Swami Vivekanand, R.C. Dutt and M. Viswevraya. The stress on positive rights as reflected in Part IV emanated from the 20th Century doctrines of social consciousness.

The compulsions of economic degradation of Indian society made Indian leaders unequivocally accept the socialistic view that political liberty is unreal unless it is accompanied by economic equality. And also that economic security is a condition for political stability and freedom. They might not have agreed

to the Marxist teachings, liberals as most of them were, they would have been prepared to accept a formula of Welfare State for solving the primary economic problem of the community.

Fed by theory and actuated by facts, the leading members of the Constituent Assembly believed in a State which promotes common welfare. The Constitution established these obligation without doubt. This was the purpose of providing fundamental rights and directive principles as coordinate things for bringing about such a State where freedom was commensurate with the Parliament's right to determine the status of property with a view to end economic disparity among the people. The fundamental rights, while protecting individual freedom, allowed the state to intervene in the interest of social or economic emancipation. Anti-social practices like *Purdah* or *Sati* could be curbed despite religious freedom. Special or unequal treatment could be given to women, children or other backward classes, the right to equality notwithstanding. The minority interests could be preserved within the framework of democracy. And so on. The directive principles provided a further extension to the positive approach to social problems.

It is interesting to note that one of the most important of positive liberties, the right to vote, has been provided not in Part III or IV but elsewhere in article 326. By no means can this right be not treated as fundamental and it can be questioned in the present context whether it is not subject to amendment. If not, the question will crop up: Are there two types of fundamentals, one liable to amendment, another, not liable to amendment?

There can be no doubt that the fundamental rights as conceived are not absolute. Even the U.S. Constitution has narrowed down the scope of civil rights by the judgments of the Supreme Court. Other constitutions, including Indian, have limited civil rights by provisos to that effect. Different facets of 'public interest' embodied the limits in the Indian Constitution. Instead of leaving it to the courts to read the necessary bindings on rights, it seeks to express elaborately the limitations and exceptions. Moreover, under certain circumstances, the fundamental rights can be suspended. this detracts, in an important way, from their fundamental character for, unlike this, in U.K. and U.S.A. the rights cannot be suspended under any

circumstances. The Purpose of the emergency provisos, as Dr. Ambedkar clearly declared, "was to prevent endless litigation and the Supreme Court having to rescue the Parliament". The proviso permits the State "directly to impose restrictions on Fundamental rights".

In defence of the directive principles B.N. Rau maintained that it may be occasionally necessary for the State to invade private rights in the discharge of one of its fundamental duties, e.g. to raise that nations's standard of health, of living, etc. He feared that the justiciability of the fundamental rights was likely to override the public weal. He even suggested on careful study that the Constitution may expressly provide that no law or act of the State in the discharge of its contravening fundamental rights. Eventually it was though directive principles should be kept general so that there is rood or Parliament to find ways to reach the goal of economic democracy. There remained a feeling, nonetheless that directive principles fell far short of the socialist ideal. That was that.

Within the framework of the guidelines, it can be argued that the judgment of K. Subba Rao, C.J. and others departs radically from the recognized and accepted norms of judicial competence. It my be pointed obtain regard to what has been hinted elsewhere that the Constituent Assembly's approach to the due process demonstrates how with a view to advance the common good which democracy implies. The issue was inextricably connected to the question of expropriation of property and the compensation for it. It was recognized that a system of due process if adopted, would curb legislative power and it would also endanger property, tenancy and other legislative power and it would also endanger property, tenancy and other legislation for agrarian reform because then, much would turn on the ideas and interpretation of judges. K.M. Panikkar went to the extent of demanding (the demand has been revived by A.B. Vajpayee and Madhu Limaye recently) that property rights should be kept separately from other fundamental rights; perhaps implying that right to property must be subject to legislation, he maintained. If his suggestion would have been acceptable, the present situation created by the Supreme Court might not have arisen.

B.N. Rau went even further. He advised that the due process clause should be done away with altogether, for, otherwise, there would be severe limitation on the Parliament's power. He warned: "The Courts, manned by an irremovable Judiciary not so sensitive to public needs in the social or economic sphere as the representatives of a periodically elected legislature, will, in effect, have a veto on legislation exercisable at any time and at the instance of any litigant." Presently this has come to pass, although we do not have the due process clause in the Constitution. One can imagine the fears of B.N. Rau being compounded had there been a due process clause. The Supreme Court has not only opened the gates for litigation over tenancy and property rights, it stands in the way of beneficent social legislation. Had our Constitution been more clear like the Irish Constitution on social justice versus property, the course of social progress would not have been hampered by the judiciary.

There are definite indications that the intention of the Constituent Assembly was to restrict the power of the courts to review property legislation. The removal of the protection of the due process from private property meant a gain to the legislature *vis-a-vis* the judiciary. Legislation for land reform was on the anvil of several Provincial Legislatures with popular sentiment in favour of abolition of Zamindari by paying compensation. This raised the question among jurists as to the extent of the State power to deprive a person of his property in the name of social justice? Leaders of public opinion, especially the Congressmen who were committed to abolish Zamindari thought fit to keep compensation out of the courts and to be determined by law. If that was to be done it may pertinently asked why was the right to property kept in Part III of the Constitution?

It should be profitable to note that the amendment to the Draft Constitution in regard to property moved by Nehru and other provided that no one would be deprived of his property except by law should also provide for the compensation or the formula for determining it. As a safeguard Presidential assent to such a law was to be obligatory. The import of this motion was to make the Parliament the sole judge of the propriety of the principles to acquire property and the objects to be achieved therefrom. Conversely, it was made clear that the courts will

not question the fairness or otherwise of the Parliament's decision. But K.M. Munshi, who was one of the co-sponsors of the amendment left the door from the backside open for the judiciary to enter when he pronounced that the Courts can question it if "the inadequacy is so gross as to be tantamount to a fraud on Fundamental Rights to own property". Nehru was bold to proclaim, "No Supreme Court and no Judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community." The principle of parliamentary supremacy was being established. No individual could override ultimately the rights of the community at large, it was maintained. The Constituent Assembly adopted it as article 31 of the Constitution and Ayyar hailed it as "an instrument of social progress".

Curiously, soon after the Constitution came to function, in spite of all the elucidations to the contrary, the article came into dispute warranting the First Amendment for undoing the Court's objections. the Act of 1951 abolished Zamindari and added articles 31A and 31B to the Constitution. Article 31A overruled the inconsistency with articles 14, 19 and 31 by permitting the state to legislate for the acquisition of estates for public purposes. Article 31B protected various reform acts listed in the Ninth Schedule added to the Constitution along with. No reform Act could now be declared void on account of its violating fundamental rights.

The Fourth Amendment in 1955 too modified article 31(2) to the effect that no law passed under the article could "be called in question in any court on the ground that the compensation provided by that law was not adequate". This change was necessitated because in *Bela Banerjee*'s case the Court had ruled that the compensation should be the full equivalent of the property. Similarly, by adding Clause 2A to the article the State was empowered to compulsorily acquire property in case of mismanagement detrimental to public interest. The Supreme Court in the second *Sholapur Mills'* case had taken the view that the mill-owners had been deprived of their property and were entitled to compensation. Clause 2A removed this difficulty.

Nehru, prefacing the amendment, reiterated that the "responsibility for the economic and social welfare policies of the nation should lie with Parliament, not with Courts". He

urged the Parliament to do away with this contradiction so that the fundamental rights were subservient to directive principles.

The Seventeenth Amendment Act, 1964 again placed a number of land laws in the Ninth Schedule thus saving them from the jurisdiction of the Supreme Court.

The purpose of reciting the old but somewhat unfamiliar history is to bring home the point the pressures of social dynamics had removed precisely the right to property from judicial control and vested it in the hands of the legislature. In relation to property, at least, no due process was implied.

In the 1967 case of *Golak Nath* the Supreme Court by a majority of one overruled the previous decisions as having proceeded on an erroneous view of the scope of article 368. Patanjali Shastri, C.J. had contended in the earlier case of *Shankari Prasad* that the contradiction between articles 13(2) and 368 was resolved as the expression 'law' in article 13(2) covered only ordinary legislation and not amendments which were 'constitutional' laws enacted by Parliament in its capacity as a constituent body. By thus interpreting the Constitution could article 368 come into full play. This decision now stands reversed. Consequently, the Parliament ceases to have power to amend fundamental rights and its acts of the past in this sphere have been condoned. In the Court's new theory, the amendments of article 31 do violate the fundamental right pertaining to the possession of property. The judgment clearly effaces the history of the possession of property. The judgment clearly effaces the history of the social philosophy that legitimatised the change. It is not only a dramatic innovation it has brought about an anti-climax by challenging the very paused to think of the emerging political forces after the electoral 'revolution' of February, 1967 which would make it exceedingly difficult for the Parliament to amend the Constitution, it would not have thought of putting legal obstacles in the way. For, now the legal obstacles might prove to be superfluous.

In the final analysis, the fact has to be admitted that the amendment of the Constitution depends not only on the prescribed legal provisions for change but also on the predominant political and social groups in the community and their ideological orientation to questions of rights and State obligations. If the fundamental rights suit them they will not

alter them even if the alteration can be done by an ordinary process. If, on the other hand, many of them wish to see them altered, it will be done, even if the process involves legal complications. This is not to suggest that judicial interpretation on legal issues is unimportant. But the legal obstacles can be removed depending on the circumstances and thinking that surrounds them.

If the judges have founded their verdict of the inviolability of the fundamental rights they have done so on wrong logic and wrong facts. the verdict can be countered systematically:

1. The Constitution does not provide for its amendment by a newly convened Constituent Assembly whatever be the content of the articles to be amended.
2. The Supreme Court in all previous cases has acquiesced in the right of the Parliament to amend the fundamental rights.
3. Since we have largely inherited the British pattern of Government, the underlying principle of Parliament as a better representative of the people's interest has been well established.
4. The argument, that for an issue of such grave importance as amending fundamental rights, a Constituent Assembly should be revived, is invalid, because even the original Constituent Assembly was not duly representative for it was not an elected body. In fact, the Parliament is not only fully representative, it has inherited the powers of the Constituent Assembly as a matter of historical fact.
5. Even in the Constituent Assembly the suggestion for treating property as non-fundamental was aired. If that can even now be accepted the practical difficulties arising out of the Supreme Court judgment can largely be removed. But whether this can be done without the reversal of the judgment is a formidable problem. The crucial issue now is: Either the Government gives up all consideration of policies, like nationalization of banks or socialization of urban property, or the country should be prepared to adopt a new Constitution.

But, the simple solution lies in amending article 368 which permits its own amendment to the effect that the Parliament is

empowered to amend at lest article 31, if not the whole of Part III. The Supreme Court has confused 'amendment' of article 31 as 'abrogation' of the general fundamental rights. It is also misconceived that the State's intervention or acquisition of private property shall always in future mean a violation of fundamental rights. The absence of the due process clause in the Constitution ensures the fact of the Supreme Court not being given the power of Judicial Review in such cases. The Court did not realize that by posing a dam on social and economic development, it was opening the floodgates of violence and subversion. It not been belied by the majority judgment in the case under discussion. In thinking the Court flows against the tide of events.

I, on the basis of law and precedent, therefore, hold that in case the restrictions on fundamental rights included in Part III are not adequate to meet the demands of a developing society, especially in relation to article 31, the Parliament should be allowed to continue to intervene from time to time; of course, the Parliament ought to see, in its own interest and the interest of the people it represents, that its acts prove to be correctives rather of fundamental rights of the citizens. But, obviously, the Parliament has to strike a balance somewhere between the interests of the individual and those of the common man. Only Parliament is amicably suited to do this. In the ultimate sense, the Parliament has to be sovereign and in the exercise of its powers it can provide for certain methods by law for ascertaining public opinion on issues of vital importance. It can, for instance, in the present contingency, provide for a referendum. But to say that Parliament should accept the dictation of the Courts in policy matters would be to create a wrong political tradition and ignore the perspective of social philosophy inherent in the political system—the philosophy inspired by *Dharma* and the concept of 'Welfare State'

CHAPTER 4

Fundamental Rights vis-a-vis Amendment of the Constitution

THE judgment of the Supreme Court in I.C. *Golak Nath and others* v. *the State of Punjab and another* enunciates the doctrine that the fundamental rights contained in Part III of the Constitution of India are "immutable" and "beyond the reach of Parliament". Further it introduces for the first time the doctrine of prospective overruling in the juridical system of out country. Both these doctrines are pregnant with far reaching consequences and deserve thoughtful consideration by everyone who holds dear to his heart the orderly and peaceful progress of the country.

The court has rested its doctrine of immutability of fundamental rights on two major premises— one philosophical in nature and the other juridical in character.

The first premise which underlines the opinion delivered by the Chief Justice on his behalf and on behalf of his four colleagues is that fundamental rights are not the creation of any external authority but inhere in the very personality of the individual. "They are" in the words of the Chief Justice "the modern name for what have been traditionally known as natural rights." He cites with approval the observations of an author to the effect that 'fundamental rights are moral rights which every human being everywhere at all times ought to have simply because of the fact that in cortradiction with other beings he is rational and moral." The Chief Justice emphasises this further by observing that "they are *primordial* rights necessary for the

development of human personality. They are rights which enable a man to chalk out his own life in the manner he likes best."

Once this premise is adopted, it follows as a logical corollary, though not so specifically stated by the Chief Justice, that the rights of individual become beyond the reach of the State. Indeed, these are then anterior to the State and the *raison d'etre* for the latter is the securing of enjoyment of these rights to every individual. The State then is not the grantor, but only the guarantor of these rights and so can have no legitimate right to abridge or abrogate them.

This philosophical premise which was, in the eighteenth century and the first half of the nineteenth century, the foundation of the reigning political theories, is no more accepted as valid by eminent philosophers. Rights are not treated as the exclusive property of an individual. On the other hand, they are recognised to be essential conditions of a good social life. They exist only within a community and it is well recognised that their content and scope continues to change with the changing economic and cultural conditions of group life. Whatever rights there are in a society, belong "to the individuals" as Green put it, "as members of society." Their origin lies not only in the rational nature of man but also in his sociality. Indeed, it is only in a society consisting of individuals that the question of rights, fundamental or otherwise, arises. Consequently, rights owe their origin to organised society. In its absence there may be powers but there can be no rights.

But apart from the fact that in modern political theory the primordial character of fundamental rights is not accepted, it has to be seen whether the Constitution makers did proceed in their work on the basis of this philosophical premise. It is evident from the debates of the Constituent Assembly that no single philosophical premise determined the thinking of the Constituent Assembly. Consequently, out Constitution was drawn up as a result of a series of compromises between different, and sometimes conflicting, views. With due deference to the Court it would not be historically correct to impute to the Constitution makers the view that fundamental rights were primordial rights or that they had transcendental character and that the State could not but recognise and honour them in their entirety and which the future Parliament could not abridge or

abrogate. Indeed, Shri T.T. Krishnamachari, one of the stalwarts of the drafting committee, speaking in the Constituent Assembly on November 25, 1949 expressed a wholly contrary view. He observed that "fundamental rights are intended only for the people who represent a certain class of persons usually called the vested interests. It is the vested interest that *are afraid of the future Parliament elected on adult suffrage which might want to democratise, socialise and equalise the wealth and opportunity in the country*. It is the vested interests that have to be afraid of the future." It is obvious that he was not thinking of fundamental rights as inhering in the individual nor did he hold *that these were beyond the reach of Parliament*. He was not contradicted by any one in the Constituent Assembly and may be deemed to have voiced the sentiments of all the members at least in regard to the capability of the future Parliament to abridge or abrogate them.

Besides, there is intrinsic evidence in the Constitution itself that these fundamental rights were not treated to be the primordial rights of individuals. The heading to Part III is 'Fundamental Rights' and not 'Rights of Individuals'. Article 16 provides that "there *shall be* equality of opportunity for all citizens." Article 19 speaks of "All citizens shall have the right." It is obvious from the language that citizens who were originally bereft of these rights are being granted the same. The same fact emerges from the Preamble to the Constitution. It speaks of the People of India "having solemnly resolved to constitute India into a sovereign Democratic Republic and to secure to all its citizens justice, liberty, equality and fraternity... in out Constituent Assembly... give to ourselves this Constitution."

The expression 'to secure to all its citizens justice, liberty, equality and fraternity' implies two things. In the first place it implies that the rights are a grant from the people of India. In the absence of that grant the individual as such could not be deemed to have any rights. In this connection, it is worth mentioning that the Preamble to our Constitution does not state, as do other declaration of rights, that all men are born free and equal. It only speaks of rights accruing to citizens of the Indian Republic by virtue of the Constitution given by the people of India.

It could not have been otherwise. Prior to 15th August, 1947, it could not be said that individuals in India were enjoying any inherent rights. Whatever may have been the pretensions of individuals and groups, the unpalatable fact was that their liberty and opportunities were very much limited by the law of the land. Whatever rights they had were a grant to them by the law. Different political organisations were agitating to secure an enlargement of these rights by securing the grant of a liberal Constitution. In that process each political organisation drew up a charter of rights which it wanted to secure from the then British-overlords, and termed the same as the inalienable rights of the Indian people. But in actual fact such rights were not available to the Indian subjects. It would not, therefore, be correct to hold that the Indian polity established in 1950 was established by individuals enjoying primordial rights prior to its establishment and that, therefore, the fundamental rights enshrined in Part III of the Constitution were natural rights of the individual.

It is also evident from the existing provisions of the Constitution that the people of India acting in and through their Constituent Assembly did not hold that the rights they were granting to Indian citizens were to be absolute in character under all circumstances. On the contrary, the people speaking through their Constituent Assembly were fully conscious of the fact that in certain circumstances the grant of rights would remain suspended (article 358) and in the case of certain specified category of citizens these rights could be 'restricted or abrogated' (article 33). Moreover, they were fully conscious that for the realization of specified objects, such as security and intergrity of the State, reasonable restrictions may have to be imposed by law on the rights granted (article 19, clauses 2 to 6) and exceptions may have to be made in favour of weaker sections of the Indian people in the matter of some other rights. Thus they did not provide for a scheme of absolute individual rights. Conscious as they were of the respective claims of the community and individual citizens, they drew up a scheme which in their opinion could secure harmony between different and differing claims. Indeed, they were fully conscious that in actual practice one kind of freedom may conflict with another kind of freedom. They had before them the history of the freedom

of contract which had resulted in the cruellest possible exploitation of the working classes. They were, therefore, seeking to balance the different freedoms and rights in such a fashion that the evils associated with absolute freedoms or rights may not arise in our country. Indeed, by including a chapter on the directive principles of State policy they sought to minimise the evils which had flowed from the concept of absolute rights of individuals in the hey-day of *laissez fair* individualism. The entire Part IV of the Constitution is an eloquent evidence of their consciousness that a continuous process of adjustment would be necessary if the rights granted under part III were not to result in uncomtemplated and unforeseen tyrannies.

The speeches made by the members of Drafting Committee in the Constituent Assembly also emphasise this fact. In replying to the diffrent kinds of criticism advanced by some members of the Constituent Assembly, Dr. Ambedkar, the Chairman of the Drafting Committee observed as follows:

> Jefferson, the great American statesman, who played so great a part in the making of the American Constitution, has expressed some very weighty views which the makers of the Constitution can never afford to ignore. In one place he has said, 'we may consider each generation a distinct nation with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation more than the inhabitants of another country.' In another place he has said, 'The idea that institutions established for the use of the nation cannot be touched or modified, even to make them answer their end, because of rights gratuitiously supposed in those employed to manage them in trust for the public, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself. Yet our lawyers and priests generally inculcate the doctrine and suppose that preceding generations held the earth more freely than we do, had a right to impose laws on us, unalterable by ourselves and that we, in the like manner, *can make laws and impose burdens on future generations which they will have no right to alter; in fine, that the earth belongs to the dead and not to the living.*' I admit that what Jefferson has

> said is not merely true but is absolutely true.... *The Assembly has not only refrained from putting the seal of finality and infallibility on this Constitution...but has provided a most facile procedure for amending the Constitution.*

In the light of this consciousness of the need for adjustment of the scheme of fundamental rights to the changing economic, cultural and political conditions of the Indian people, would it be unreasonable to assume that they did not and could not make the scheme of rights contained in Part III of the Constitution a thing beyond the power of the people of India acting through their recognised agency, namely the Parliament. In any case, it would not be unreasonable to hold that the scheme of the rights enshrined in the said part is not and was not contemplated to be immutable. With due deference to the court it does not appear that the philosophical premise on which its judgment has proceeded to some extent at least is necessarily sustained by the facts of the situation.

The court has, however, come to its consclusion as to the immutability of fundamental rights mainly because it has, contrary to its opinion in *Shankari Prasad's* case as also in *Sajjan Singh's* case, come to form in this case an opinion by a majority of six to five that the process of amending the Constitution is a legislative process and that the product of that process is 'law' as defined in article 13(2). That article provides that "The state shall not make any law which takes away or abridges the rights conferred by this part and any law in contravention of this clause shall, to the extent of the contravention, be void," and since the expression State under article 12 is defined to include Parliament, it held that if any constitutional amendment made under article 368, abridges or abrogates any of the rights contained in Part III it shall be void to the extent of contravention.

The reasons why the majority has held that the amending process of the Constitution is nothing but legislative process are two-fold in character. In the first place it has held in this case that the power to amend the Constitution is not conferred by article 368. The Chief Justice observed that "the article in terms only prescribes various procedural steps in the manner of amendment, it shall be initiated by the introduction of a bill in either House of Parliament, it shall be paved by the prescribed

majority in both the Houses; it shall then be presented to the President for his assent, and upon such assent the Constitution shall stand amended. The article assumes the power to amend found elsewhere and says that it shall be exercised in the manner laid down therein." He brushed aside the contention that the expression ' the constitution shall stand amended' indicated that power to amend was immanent in article 368 itself as 'subtle but unconvincing.' "The contention that the power to amend was an implied power to be inferred from article 368 or from the nature of the articles sought to be amended" was also rejected by his lordship on the ground that "the doctrine of necessary implication cannot be invoked if there is an express provision or unless but for such implication of the article will become otiose and nugatory." The Chief Justice added that there is not necessity to imply such power, as *Parliament has the plenary power to make any law,* including the law to amend the Constitution subject to the limitations laid down therein. He finds that this power is conferred by article 245 read with article 248 and entry 97 in the list I of schedule VII to the Constitution. Article 245 provides that 'subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India.' Article 248 provides that 'Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.' Entry 97 in the list I runs as follows: "Any other matter not enumerated in List II or III including any tax not mentioned in either of those Lists" In short, the Chief Justice holds that the power to amend the Constitution, though not specifically mentioned in any of the aforesaid articles, must be deemed to be residuary power falling within the exclusive domain of the Parliament by virtue of these articles and entry 97 on the ground that it is as much a law as any other law is. With due deference to his lordship he adopts as premise what had been sought to be proved to be the truth. If it is already assumed that constitutional amendment is a law like any other law, then there remains no reason to establish that there is no distinction between constitutional amendment and ordinary legislation. But this is the crux of the problem. Is constitutional amendment to be taken to be included in the term law as defined by article 13(2)? Should it be taken for granted that the makers of the Constitution were

not influenced by foreign theories in regard to the distinction made between organic law and law simpliciter? It would appear from a perusal of the articles of the Constitution that they maintained a distinction between a mere law and the Constitution. A constitutional amendment becomes an integral part of the Constitution and as such is constitution itself. Consequently, if they had wished to include constitutional amendment in the definition of the term law in article 13(2) they could have included in it a constitution amendment as well. They did not and rightly so because no Constitution and no part of the Constitution could be made immune to changes essential to make it suitable to the changing conditions of group life. Besides, in this connection, it is worthwhile to draw attention to the well established fact that the clause relating to residuary power is inserted in constitutions containing enumeration of the various political entities established by the Constitution makers in order to provide for a contingency which is not within their knowledge at the time they are drawing up the constitution and which may not be foreseen and imagined by them. Indeed, for matters which are within their knowledge and for which they have made provisions, the residuary power is never intended. In this connection, the observations of Shri Krishnamachari, one of the main architects of the Constitution, have relevance. Speaking in the Constituent Assembly on November 25, 1949, he observed:

> In my mind there seems to be the possibility of only one power that has not been enumerated, which might *be exercised in the future by means of the use of residuary power*, namely the capital levy on agricultural land. This power has not been assigned either to the Centre or to the Units.

Thus in his view all other powers including the power of amendment had been provided for by the Constitution specifically. Indeed, could it be said that the Constitution makers were not conscious of the necessity of the amendment of the Constitution to suit it to the changing conditions of life? Obviously not. From the extract of the speech of Dr. Ambedkar given above it is abundantly clear that the architects of the Constitution were fully aware that they could not bind all the future generations by the Constitution drawn up by them and

that for that reason they had made provision for its amendment in the Constitution itself. If they were doing so, then it would not be reasonable to assume that in the part exclusively devoted by them to the subject of amendment they contented themselves with laying down the procedure only and did not confer the power to amend. By the very fact that a wholly distinct part was devoted to the amendment of the Constitution, it is obvious that it was intended to deal exclusively with the power and procedure of amendment. If they had not intended to give constitutional amendment a distinct status they could well have added a provision to article 100, providing for a special majority for any question relating to constitutional amendments. In this connection, the observation of Dr. Ambedkar in his speech in the Constituent Assembly on November 25, 1949 to the effect that "The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying the people the *right* to amend the Constitution" is significant though not conclusive. It would appear from this remark that the right to amend the Constitution had been granted by the Constitution itself. Dr. Ambedkar, no doubt, speaks of the people having this right. But the people speaking through their Constituent Assembly had by the Constitution given to themselves, spoken that this right was to be exercised by them in accordance with the procedure laid down in article 368, that is to say through the Parliament. In this connection, attention may be drawn to the further observation of Dr. Ambedkar while amplifying the remark relating to the right of the people to amend to Constitution. He said that the Assembly:

> has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which the country finds itself, provided such a facile procedure for the amendment of the Constitution. Those who are dissatisfied with this Constitution have only to obtain a 2/3rd majority to amend it.

It may be inferred, therefore, that in making this observation he was contemplating not only the procedure to amend but also the right and power to amend, which he at least felt had been put in Part XX of the Constitution. Whatever had been stated

earlier by him is obviously superseded by this final speech made by him after the Constitution had been fully drawn up. This view finds further support from what Shri T.T. Krishnamachari stated in the Constituent Assembly on November 25 1949. He observed:

> I agree that the best point is the *amending power...and in regard to the matters covered by the Constitution the amending power* rests with the Centre.

It may, therefore, be inferred that the Constitution makers did intend to grant the power of amendment and lay down the procedure by Part XX of the Constitution itself, which was exclusively devoted to the subject of amendment. It may also be inferred that when they were specifically making provision for this matter they could not have intended it to fall within entry 97 in list I of Schedule VII to the Constitution or to be covered by article 243 read with article 245.

Have they made this intention clear from the terms employed in couching article 368? With due deference to the Court they have. In the first place the expression *"passed* in each House by a majority of the total membership of that House and by majority of not less than two-thirds of the members of that House present and voting " indicates that each House has the power of passing or rejecting the Bill introduced for amending the Constitution. A Bill to amend the Constitution may be introduced in an unauthorised body, but since it has no authority it cannot be passed by it so as to have any effect. It is only when the concerned body has the power to pass the Bill that its act of passing the Bill can have any effect in law.

It is obvious from the use of the expression "when passed" that what was intended was that the Bill to have any effect, each of the Houses must have exercised the power of duly considering it and approving it with or without changes. Besides, as Justice Wanchoo observes, the use of the expression "the Constitution shall stand amended in accordance with the terms of the Bill", indicates the grant of power to the Parliament to amend *the Constitution.*

Indeed, if it had been intended that the constitutional amendment should be put on the same footing as ordinary law, then there was nothing to prevent the Constituent Assembly from adding a clause to article 245 to the effect that the

Parliament may make laws to amend the Constitution in accordance with the procedure laid down in article 368. If the Constituent Assembly had intended to lay down only the procedure to amend the Constitution in its Part XX, then conscious as they were of the necessity of amendment, they would have made such a provision for granting the power to amend by law the Constitution rather let it be inferred from the articles and clauses relating to residuary powers. In that case there would have been no necessity to add the expression "subject to the provisions of this Constitution" to the clause relating to the amendment of the Constitution for any law made by the Parliament under that provision would have been void if it were inconsistent with the provisions of article 13(2).

If article 245(1) were intended to grant the power of making laws to amend the Constitution, then it would appear to be clumsily worded because it commences with the expression "Subject to the provisions of this Constitution". As already stated, this expression would not be requisite to attract the provisions of article 13(2) to any law amending the Constitution which was inconsistent to the former. It has not been so far held that the law amending the Constitution cannot amend parts of the Constitution. So the opening words of article 245 could have significance only if they applied to ordinary law. They have no significance whatever in relation to the amendment of the Constitution. Indeed, as pointed out by His Lordship Justice Wanchoo the use of the above mentioned expression indicates that constitutional amendments were not intended to be covered by it. With due deference to the opinion of the majority of the Court, it would appear that article 368 grants the power to amend and lays down the procedure to be followed.

The second season which has weighed with the majority of the Court in holding that a Constitutional amendment is law within the meaning of article 13(2) is that the amending process is the legislative process as laid down by the Constitution and the product of that process can be nothing but law. The Chief Justice observes that "the amendment can be initiated by the introduction of a Bill, it shall be passed by two Houses; it shall recieve the assent of the President." These are well-*known procedural steps in the process of law making. Indeed, this court in Shankari Prasad*'s case brought out this idea in clear terms. It

said, "In the first place it is provided that the amendment must be initiated by the introduction of a Bill in either House of Parliament, a familiar feature of parliamentary procedure [*cf.* article 107(1) which says a Bill may originate in either House of Parliament]. Then the Bill must be passed in each House—just what the Parliament does when it is called upon to exercise the normal legislative function [article 107(2)]; and finally the Bill thus passed must be presented to the President for his assent—again a parliamentary process through which every Bill must pass before it can reach the Statute Book [article 111]. We thus find that each of the component units of Parliament is to play its allotted part in bringing about an amendment to the Constitution. The Chief Justice observes in *Golaknath*'s case that:

> If amendment is intended to be something other than law, the constitutional insistence on the said legislative process is unnecessary. In short amendment cannot be made otherwise than by following the legislative process.... The imposition of further conditions is only a safeguard against hasty action or a protection to the States, but does not change the legislative character of the amendment.

He proceeds to reinforce this conclusion by reference to articles 3 and 169 and para 7 of the 5th Schedule and para 21 of the Sixth Schedule to the Constitution which provide for alterations to be effected in the Constitution. These amendments, the Chief Justice observed, "under the said provisions can be made by the Union Parliament by simple majority." Such amendment is law made by the legislative process and that but for the fiction introduced it would attract article 368. That some amendment require a special majority does not change the character of the process by which they are made. The Chief Justice, therefore, concludes:

> that amendment either under article 368 or under other articles are made only by Parliament by following the legislative process adopted by it in making other law. In the premises an amendment of the Constitution can be nothing but law.

It may be submitted with due respect that the court in *Shankari Prasad*'s case did not definitively state that the process prescribed under article 368 was not distinct from the ordinary

legislative process. The court only brought out the parallelism between the two processes but did not pronounce them to be identical. That the two processes are not identical is evident from the fact that there is no provision for the resolution of differences between the two Houses of Parliament on a Bill in so far as a Bill amending the Constitution is concerned. In the case of Bills, not dealing with the amendment of the Constitution, such differences must be resolved by the holding of a joint session of the two Houses under article 108. This difference makes a vital distinction between the simple legislative process and the process for constitutional amendment. In the case of a simple law, the will of majority in the joint session of the two Houses prevails. In other words the House of the People can, in certain circumstances, get its will made into a binding law even though a majority in the Council of States were opposed to it. But in the case of the constitutional amendment such cannot be the case. It is true that in 1951 the Provisional Parliament passed the Constitution (1st amendment) Act even when it consisted of one House only. But it did so on account of the adaptation made in article 368. If that adaptation had not been made, it could not have acted even though it was, in a sense, a successor body of the Constituent Assembly. The fact is that as article 368 stands today it provides for a process which though parallel in certain respects to the legislative process is also different from it in at least one vital respect. It does not permit even a contingent supremacy of the House of the People in the matter of constitutional amendments. It ia not a distinction without any substance. This distinction gives to the Council of States an equal status with the House of People which the former does not have in relation to ordinary bills because in the latter case it is possible that on account of its smaller numerical strength it would be possible for a majority of the House of People to override the Council's opposition to an ordinary bill.

Besides, it is clear from the scheme of the Constitution that some changes therein have not been given by the Constitution makers the character of a constitutional amendment. The fact that these changes can be effected by simple legislative process does not go to prove that the process of the constitutional amendment is nothing but purely and simply a legislative process. The fact that the adoption of the simple legislative

process is not adequate for effecting a constitutional amendment is clearly emphasised by the specific provision that such changes are not be deemed to be amendments of the Constitution. The Constitution makers felt that certain changes of minor importance should be left to be dealt with by the Parliament qua legislature. But in the case of other changes they felt that the Parliament should act as a constituent body so that the attention of the people may get drawn to the amendments proposed in the Constitution and their opinion may have its effect on the deliberations of the Constitution amending body. In this connection, attention may be drawn to the dual role which the Constituent Assembly itself had. It was drawing up a Constitution for India and was also acting as a legislative assembly for passing laws for the country. Indeed, when sitting as a legislature it could not have even by a unanimous voting made a single constitutional provision while it did make constitutional provisions by simple majority when sitting as a Constitution making body. Authorities on constitutional law and practice recognise that the same body can have different functions to perform. These may be constituent, legislative, financial or in some cases executive in character. The Parliament in our country performs both legislative and financial functions. It stands, therefore, to reason that in inserting part XX in the Constitution, the Constituent Assembly gave the role of the Constituent Body to the Parliament in so far as amendments to the Constitution were concerned, and laid down a special procedure to be followed by the Parliament when acting as a constituent body. Indeed, the difference of phraseology between the article which lays down the legislative procedure and article 368 indicates that the Constitution makers did not treat the latter as a mere legislative process. Article 368 does not say that the President shall declare either that he assents to the Bill or that he withholds assent therefrom, nor does it give a power to the President to return Bill relating to constitutional amendment to the Houses with a message recommending any amendments therein. It is, therefore, a moot point whether the President would have the right to withhold assent, once a bill proposing an amendment to the Constitution and passed by two Houses of Parliament, is presented to him for assent. It may be stated that article 368 not only provides for a special majority, but also

introduces differences in the respective positions of the different limbs of Parliament in the matter of having a say in regard to constitutional amendments. Consequently, the two processes are distinct from each other.

One other consideration which has weighed with the Court is that if Parliament passes a bill abridging or abrogating fundamental rights by a majority with the appellation of a constitutional amendment it would be void, but if it passes the same Bill by giving the appellation of constitutional amendment by a mere two-thirds majority it would, if the view that the process prescribed under article 368 is not legislative process were to be accepted, be quite valid. The Court feels that the Constitution makers could not be deemed to have intended to create such an anomaly. In this connection, however, it is submitted with due deference that if viewed in the light of the two capacities of the Parliament it does not appear in fact to be an anomaly. It is well known that the same attention is not given to a mere legislative measure as is given by the people to an amendment proposed in the Constitution. So the appellation of a Bill has its own significance from the viewpoint of the coming into play of public opinion in regard to the measure on the anvil. Besides, a different capacity makes a vital distinction. If all the members of a legislative body sitting as a committee take a decision, then it does not become the decision of the House as such. But a decision by mere majority taken in the House is a decision of the House. It is the capacity in which a body acts that is material. Article 368 gives the Parliament the capacity of a constituent body in the matter of effecting amendments, and as such they can do by a two-thirds majority what the same body in a different capacity may not be able to do by an unanimous vote. This would be evident from the converse case in which a change in the Constitution were to be made under article 4(1) by unanimous vote of the two Houses of the legislature. Even if that were so, it would not acquire the status of an amendment to the Constitution even though a 2/3rd majority is required for a constitutional amendment under article 368.

Finally, it has to be kept in view that the language used in article 368 is unqualified. It does not exclude from its purview Part III which relates to fundamental rights. If it had been the

intention of the Constitution makers that the fundamental rights should be placed beyond the reach of the Parliament, they could well have added a second proviso to that article making this intention clear. In regard to certain provisions the Constitution makers held that the States had a vested interest in them, and consequently, they made a provision that no change should be made in them unless a majority of States consented to that change. All the entrenched provisions specified in article 368 are those in which states have vested interest. This is true in regard to the constitutional provisions relating to the Supreme Court and the High Courts. States have as much vested interest in them as the Union can have. Indeed, one of the essential factors which make possible the establishment of a federation is the establishment of an impartial judiciary to adjudicate in all matters which arise between the Union and the constituent units. So States insist that they must have a say in every constitutional provision affecting the judiciary. Such consent of the States is helpful in the continued maintenance of the Union. The maintenance of the Union is an objective of supreme importance for on its maintenance depend all the benefits that accrue to the citizens of India. It ia an objective for which restrictions may be legally placed on the rights of the citizens and for which they may be asked to risk their lives. In comparison to this object, the rights of individual citizens have only secondary importance. The Constitution makers very naturally added a proviso to article 368 to ensure special protection to all the provisions in which the States had a vested interest. Indeed, if they had not done so, they would have permitted the Union unilaterally to effect a change in the relations established by the Constitution between the Union and the States, even in the teeth of the opposition of the latter. But that would have created the danger of the Union breaking up. The Constitution makers have guarded against this danger by means of the proviso to article 368.

But the Constitution makers did not and could not give the fundamental rights a higher status than they had given to the provisions having a bearing on the continuance and permanence of the Union. These rights could be suspended or abrogated as occasion demanded without any risk to the continued existence of the body politic. So they did not entrench them against a

constitutional amendment. It was considered by the Constitution makers that these rights would be sufficiently safeguarded if they were entrenched against the day-to-day legislation or executive actions of the governmental authorities. But they did not entrenched them against a constitutional amendment for the simple reason that in the social and economic circumstances prevailing in the country it was inevitable that the State may take action to abrogate at least one of the fundamental rights in order to make it possible for the vast majority of Indian citizens to enjoy a fuller, and a more dignified, life than what was already available to them. Indeed, most of the constitutional amendments have been in relation to the right of the property which as Justice Hidayatullah concedes is the weakest right. They have been passed with the object of abolishing the economic inequities that affect the present day Indian society. The Constitution makers intended as is evident from the 'Directive Principles of State Policy that the State must take steps to prevent concentration of wealth and for an equitable distribution of the same amongst Indian citizens. This is what the various constitutional amendments have sought to achieve. By giving however, the fundamental right, including the right of property, the character of immutability, and placing them beyond the reach of the Parliament, the Court has in effect made itself the protector of the vested interests and has in a way blocked the path of the social order being changed by constitutional means. The remedy suggested by the Court, namely, the convening effective as the same reasoning would apply against that Assembly's actions as the Court has applied against those of the Parliament. It would also be a constituted body and could not have greater powers than the constituent body namely the Parliament itself. A way out is, therefore, needed so that peaceful progress in the economic and social order could be ensured.

CHAPTER 5

Parliament's Power to Amend Fundamental Rights

THIS is devoted to discuss the subject of fundamental rights and constitutional amendment. The decision of the Supreme Court in *Golak Nath*'s case has given rise to an impression that Parliament has no power to amend the fundamental rights contained in Part III of the Constitution. A Private Member's Bill to clarify the position and to declare that power of amendment extends to all the provisions of the Constitution including the fundamental rights has been referred to a Select Committee. Therefore, we should deal with the decision of the Supreme Court in *Golak Nath*'s case and the Bill pending in Parliament for amending article 368 of the Constitution. I would like to point out the importance of the power of amendment in 'Written Constitution'.

It has been said that an unamendable constitution is a contradiction in terms and that the doctrine of amendability of the constitution is grounded on the doctrine of sovereignty of the people. Any restriction on the power of amendment of a constitution impinges upon the sovereignty of the people.

Thomas Paine writing in 1791, on the Rights of Man, said:

> There never did, there never will, and there never can, exist a Parliament, or any description of men or any generation of men, in any country, possessed of right or the power of binding and controlling posterity to the 'end of time' or of commanding for ever how the world shall be governed, or who shall govern it: and therefore all such clauses, acts or declarations by which the

> makers of them attempt to do on what they have neither the right nor the power to do, nor take power to execute, are in themselves null and void. Every age and generation must be as free to act for itself in all cases as the ages and generations which preceded it. The vanity and presumption of governing beyond the grave is the most ridiculous and insolent of all tyrannies. Man has no property in man; neither has any generation a property in the generations which are to follow. The Parliament of the people of 1668 or of any other period, had no more right to dispose of the people of the present day, or to bind or control them in any shape whatever, than the Parliament or the people of the present day have to dispose of, bind or control those who are to live a hundred or a thousand years hence.

Same were the views expressed by the Framers of our Constitution when the relevant provisions of the Draft Constitution were being considered in the Constituent Assembly. Dr. Ambedkar, while speaking in the Constituent Assembly on November 25, 1949 said:

> The assembly has not only refrained from putting seal of finality and infallibility upon this Constitution by denying to the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or in Australia, but has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for amendment of the Constitution.

Pandit Jawahar Lal Nehru speaking in the Constituent Assembly in this regard said:

> And remember this that while we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless, there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a

Nation's growth, the growth of living vital organic people. Therefore, it has to be flexible.

Another reason for having a power of amendment in a Constitution is that the amending power operates as a safety valve to enable the Constitution to be adjusted to the changing requirements of the society peacefully and to prevent the overthrow of the Government and destruction of the whole Constitution by a revolution. Chief Justice Subba Rao, speaking for himself and four other learned Judges of the Supreme Court, seems to proceed on the basis that enforcement of the provisions of the Constitution can never bring about a revolution and that history shows that revolutions are brought about not by majorities but by the minorities and sometime by military coup. I fail to understand the reason of the learned Chief Justice. In my view the situation can arise when as a result of the changing social conditions the provisions of Constitution which were framed under a particular set of conditions may become so unjust as to operate inequitably against a major section of the population of the country forcing them to revolt against such a Constitution and to as for a new Constitution more suited to the changed social conditions. History shows that revolutions take place when the laws fail to keep pace with the changing social conditions and enforcement of the said law leads to injustice and oppression.

Having pointed out the importance of power of amendment in a written Constitution, I would now examine the question whether there is anything in the Chapter relating to fundamental rights which should be so sacrosanct as to be beyond the power of amendment.

Fundamental rights are rights which the State has chosen to confer on its citizens to enable a smooth and proper functioning of the State organization and to preventing justice or oppression which may in the end lead to revolutionary stage. The object of the Government is, however, to fulfil the obligations cast on them under Part IV of the Constitution relating to 'Directive Principles of State Policy'. One can visualize that fundamental rights of the individual may operate as an impediment or a fetter in the path of State to fulfil its obligations under Chapter IV of the Constitution and in that event it may become necessary to amend the provisions of the fundamental

rights to enable the State to discharge its obligations. Any denial of power to amend the fundamental rights in such a situation may lead to economic and social inequalities which may assume such a proportion as to endanger the whole Constitution. As an illustration, I may point out that in order to improve the economic conditions of the masses of this country the State may have to resort to measures for the abolition of monopolies, nationalisation of various industries, acquisition of property for social purposes, as slum clearance, and the State may not be in a position to pay full compensation to the person whose property has been taken away. In that event, unless the right to property guaranteed under article 31 of the Constitution is not suitably amended, it may not be possible for the State to carry out its policies and to achieve economic and social equality which is the basic postulate of the Constitution.

Having considered the importance of the power of amending the Constitution, and having pointed out that fundamental right are not so sacrosanct as to be above the said power of amendment, I will now analyse the Judgment of the Supreme Court in *Golak Nath*'s case.

Before Golak Nath's case the Supreme Court had considered the scope of the power to amend the Constitution. In two earlier cases, it had held that the power conferred under Article 368 of the Constitution was wide enough to include the power to amend the fundamental rights contained in Part III of the Constitution. In *Golak Nath*'s case the view of the Supreme Court may be analysed as under:

(*i*) Five learned judges (Wanchoo, Bhargava, Mitter, Bachawat, and Ramaswamy) held that the power of amendment of the Constitution conferred by article 368 is unqualified and absolute.

(*ii*) Five learned judges (Subba Rao C.J., Shah, Sikri, Shelat and Vaidialingam JJ) held that article 368 does not confer any power of the amendments of the Constitution, but only lays down the procedure for such an amendment. The power to amend the Constitution is contained in the Residuary Clause (Article 248, Entry 97 of List I) read with Article 245 of the Constitution. They, therefore, held that every amendment of the Constitution is a law and is subject to article 13 and

Parliament cannot amend any other fundamental right contained in Part III.

(*iii*) One learned judge (Hidayatullah J.) has said that the fundamental rights are outside the amendatory process if the amendment seeks to abridge or take away any of the rights. According to him it is a mistake to put the right to property as a fundamental right in Article 31 and that it was put there under the dead hand of Sec. 299 of the Government of India Act, and that the power of amendment does not fall in any of the three legislative lists, but is *sui generis*.

The aforesaid analysis of the various judgements in *Golak Nath's* case will show that there is no clear cut majority for the view expressed by Chief Justice Subba Rao, or the view expressed by Wanchoo J. and other Judges supporting him.

I may point out some of the fallacies in the Judgments of the Chief Justice Subba Rao. In my view the basic error in the approach of learned Chief Justice is that he has eliminated the well known distinction between the constituent power and legislative power. The constituent power is a power which is above the Constitution and not subject to which are imposed by the various provisions of the Constitution. The result of putting the power of amendment in the legislative power under article 248 read with Entry 97 of List 1 would be that every amendment of the Constitution would be unconstitutional and void because, the legislative power is always subject to the provisions of the Constitution and law amending the Constitution is bound to be inconsistent with the provisions of the Constitution as it stood on the date of the amendment.

I agree with Mr. Seervai in his expressions in his recent book on the Constitutional Law of India that:

(*i*) it is necessary to express the final opinion whether Part III can be legally amendment;

(*ii*) power to amend the Constitution cannot be a residuary power of legislation contained in Entry 97 of List I;

(*iii*) the significance of article 368 and the great importance in Federal Constitution of the proviso in that article has been overlooked in the Judgment of Subba Rao C.J. and the Judges following him;

(*iv*) Subba Rao C.J. is mistaken in holding that no Constitution providing for amendment contained a clause like article 13(2);

(*v*) The theory of prospective invalidity means that a Judge makes a law in a modern dynamic society;

(*vi*) Chief Justice Subba Rao's judgment and the Judgment of other Judges who supported him deny to a sovereign people the right of amendment of the Constitution and to its Parliament. No Judiciary can hold up the will of the people. The Judgment of the majority requires reconsideration.

Whereas Subba Rao C.J. and other Judges who agree with him have taken the view that there is no power to amend the fundamental rights at all, Justice Hidayatullah seems to have taken the view that Parliament may make a law for convoking a Constituent Assembly and that Assembly may amend the fundamental rights. The objection to the said view is that by resorting to such a procedure, Parliament will be doing indirectly what it cannot do directly and that is not permissible in law. Secondly, I think that the Constituent Assembly established under a law made by Parliament would be an 'Authority' and therefore 'State' within the meaning of the article 12 of the Constitution and amendments made by the Constituent Assembly would equally by void under article 13(2).

I agree with Mr. Seervai that it is difficult on principles to understand how if a freely elected Parliament cannot be trusted to amend Part III as provided by article 368, another body set up by the same Parliament can acquire higher authority.

Thus, a Constituent Assembly is either legally impossible or wholly unnecessary.

Therefore, the position should be authoritatively clarified and in my humble submission there should be a reference to Supreme Court under article 143 for a final and authoritative clarification of the debatable issue as to whether Parliament can amend the fundamental rights.

'Judges and their digestion' School

Modern jurisprudence recognises a movement in legal thinking called the 'Realist' school of Jurisprudence. The mental father of

this school was that distinguished American Judge and thinker Oliver Wendell Holmes. In an essay published in 1897, Justice Holmes gave an entirely empirical and skeptical definition of law. He denied that there was any system of reason in law, or that deductions in law are based on principles of ethics or admitted axioms. He said, "The prophesies of what the court will do in fact, and nothing more pretentious, are what I mean by law." Ever since the 'realist' movement has gathered strength. Extremists of this school aver that the decision of a judge in a case depends on the state of his digestion or, as the English gibe goes, on the length of the Chancellor's foot! We may agree that these are hyperboles. But such hyperboles apart, the basic insights of this school are being borne out every day. Speaking of lawyers the school believes that their arguments should not be taken at their face value. They should be regarded as the art of the trained craftsman to make a decision plausible, after he has reached it. How else, but on this theory, can we explain some of the arguments so seriously adduced by Counsel in *Golak Nath*'s case and equally seriously considered by the Judges. Speaking of judges, the distinguished jurist Gray, another 'realist', stated, "Statute, precedent, equity, custom are but sources of law. The law is what the judges lay down." The majority judgment in *Golak Nath*'s case discussing the theory of 'prospective over-ruling' affirms that judges make law and confirms that they that they can apply it as they like. The majority judgment which is also anique in that it discards two firmly established legal doctrines—the doctrine of *'Stare Decisis'* and the doctrine of 'Reasonable Doubt' and introduces the doctrine of 'prospective over-ruling' is again in keeping with the belief of this school that decisions turn on 'imponderables'.

I would, therefore, commend to this convention the 'Realist school' and hope that someone with the necessary ability would examine the judgment and the findings in this case from the 'realist' point of view. It is proposed in this paper to attempt such an approach.

Constitution and its 'torture'

The 'realist' school believes that Constitutions can be tortured just as men can be! But as constitutions do not have corporeal bodies, it is their texts that are tortured. There is no reason to

believe that this 'torture' is confined to lawyers and judges. Administrators, legislators, in fact all of us engage in it occasionally i.e., when it suits us to do so! That is why the legal terminology constantly speaks of 'tortured construction'. That is why, as if disgusted by the whole business, shrewd judges and jurists have evolved 'Canons of Interpretation' or 'Construction Canons', as we all know, are useful tools like their similarly high sounding counter-parts in warfare. Properly employed they vanquish the enemies called 'Doubt and Ambiguity', but when not so employed they only make confusion worse confounded. We may examine, therefore, how these canons have been employed in interpreting article 13(2) of our Constitution, but before doing so we may see what great judges have told us about canons and interpretation.

Justices Holmes and Cardozo on Interpretation

The celebrated Justice Holmes gave us some wholesome precepts on interpretation. He has said, "The meaning of a sentence is to be felt not proved." "The general purpose is an important aid to meaning than any rule, grammar or formal logic, may lay down." Cardozo, another American judge, whose name is familiar in the legal world, had this to say of interpretation: "Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effect a change in policy, to formulate a plan of government. The aim is evinced in the language of the statute. We should look at the statute and nothing else. The history of changes, discussion are all irrelevant. Legislative history must not swallow the legislation. Courts may not be confined by the language but they are confined by the statute. In construction it is a choice between uncertainties. We may look at the Constitution and nothing else. We may feel the meaning of its clauses assisted by logic.

Counsel take position about Article 13(2)

The majority of the judges in *Golak Nath's* case have held that an amendment of the Constitution is 'law' within the meaning of article 13(2). It is not difficult to see how this finding was arrived at, if we make a 'Realist' approach to the question. We

see from the judgment that there were able counsel on either side and the moment they realised what the main issue was they set about their respective tasks with alacrity. Counsel on behalf of the petitioners being practical men saw only that which they wanted to see. They saw if they were to succeed, they had to hold that an amendment of the Constitution was 'law'. They did so; and thereafter it was easy for them to marshal every conceivable, plausible or possible argument in favour of it, drawing freely from law, logic, precedents, and bulky books on Constitutional Law. Counsel on behalf of the Respondents did likewise to support the contrary view. The majority of judges felt the views of the former represented their own view. They accepted it. And, as with legislatures so with judges, it is the majority that counts.

The correct question about Article 13(2)

If a 'realist' approach is made the correct question to ask about article 13(2) however, is not whether an amendment of the Constitution is 'law' or not. It is like asking the question whether a dragon is a bird or an animal. If we think of its wings we could call it an animal and nobody can stop us from doing so. If we think of its existence we may begin to doubt it and end up by calling it a figment of imagination. It is, therefore, no use asking if an amendment of the Constitution is 'law'. The proper question to ask is, whether Constitutional Law as a category is different or distinguishable from all other law as another category, whether it has been traditionally so recognised, and whether the Constitution of India itself by words expressed or implied makes such distinction. In answering these questions we may draw on logic, tradition, experience and the text of the Constitution itself.

Logic discovers amendability

We may examine first the logic of the finding that the fundamental rights cannot be amended so as to take away or abridge them. 'Ordinary law', as we all know, can be amended freely and as frequently desired. When anyone asserts that the Constitution, or any part of it, cannot be amended like any other law, by that very logic, he is admitting or recognising that the Constitution is a law apart, that it is a special law, that it is a

law different in kind from all other legislation or law. In fact, the majority judgment seems to affirm this, though in a different context. The judgment observes "there is an essential *distinction* between the Constitution and the Statutes. Comparatively speaking, Constitution is permanent; it is an organic statute; it grows by its own inherent force". If that is so, and the judges assert it in that manner, what is the difficulty in their recognising the Constitution as a distinct category of law and excluding it from the definition of 'law' in article 13(2)? It should be clearly understood that Judicial Review itself rests on the basic idea of one law being superior to another: Would we not be justified in saying that the judges in this case strained the language and should have clarified the position much better? We may examine what the Constitution itself has to say about this *'distinction'*.

Judges and their oath

On assuming office, judges of the Supreme Court take an oath or make an affirmation in a form prescribed in the Third Schedule to the Constitution which ends with the words—"I shall uphold the Constitution and the laws." The President, the Vice-President, the Ministers, and all Constitutional authorities take a similar oath. We notice that this distinction has been maintained in other articles also, for example articles 266 and 326. What does this distinction mean and why has it been made? What did the judges in any case understand when they took their oath "to uphold the Constitution and Laws?" How is it, as some of the judges have now interpreted in *Golak Nath*'s case, the Framers of the Constitution did not treat "the Constitution and the Laws" as identical. These are the 'imponderables' of law. And those are some of the questions which this Convention may well consider.

Content' and 'Process' in Legislation

The next question we may attempt to answer is how one law is 'distinct' from another and how can we distinguish Constitutional Law as a category from other laws. When anybody calls the Transfer of Property Act, and the Constitution of India 'laws' without knowing their content what does he

understand or mean? He calls them 'laws' firstly because there is no other common or abstract name by which to call them and secondly because he is aware they are acts of legislature, that they have all gone through a legislative process, been approved by Parliament and the President, and that, therefore, they are binding as law. In other words laws are distinguished from one another not so much by their process as by their content. Constitutional Law *as a category* is distinguished from all other laws as a category not only by its process, and content, but by its nature, authority and sanctions. A constitution is that law from which legislatures derive their power to make laws; the government its power to execute those laws; and judges their power to interpret and apply those laws. There is only one basic constitution for a country and one instrument that does this. Its other 'laws' can fill volumes by the dozen. That is why we call the Constitution the organic or fundamental or 'Higher' law of the land and distinguish it from positive law, i.e., acts of legislatures which get into our statute book. That is what experience at any rate tells us.

Purpose of Article 13

The meaning of article 13 becomes clear if we read it as a whole with article 12 which precedes it. Reading the articles piecemeal or trying to find the meaning of words like 'State' and 'Law' can lead us to absurdities. For example, we could say the word 'State' includes the Judiciary which is an organ of the State and the word 'law' includes judge-made law, i.e., doctrines and decisions. Based on these premises it can be argued that the Supreme Court cannot tamper with fundamental rights. But to say so would be absurd, because neither the judges nor the lawyers will accept it. It is what is acceptable to lawyers and judges that is good law; for are they not the guardians of our Constitution? To revert to the main argument we then ask ourselves the question what the purpose of these articles is, what mischief they seek to obviate or what omission they supply. We notice that if article 13 had been omitted there would have been no power to review any administrative order, or any custom or usage [article 13(3)(*a*)] that has the effect of taking away or abridging the rights conferred by that part. The courts would have been confined to

providing only the remedies mentioned in article 32 on a case to case basis and to a limited extent. Article 13 then provides in a way for a wider power of Judicial Review of any legislation etc., affecting the fundamental rights as given in the Constitution. The Framers of our Constitution could not have been unaware that in the absence of such a power in the American Constitution the subject of Judicial Review of legislation has since Chief Justice Marshall's decision in *Marbury* v. *Madison,* been a constant source of controversy which some jurists even today treat as "an usurpation of power" of the Congress by the Supreme Court of U.S.A. In *Golak Nath*'s case our Supreme Court goes much further and not only claims the right to Judicial Review of legislation but the right to Judicial Review of a Constitutional amendment. We may state at once that on the present interpretation there is no such power given, nor can any such power be deduced from article 13. Even the power to review is doubtful because on a strict construction it has not been stated who will declare such law void. Then all article 13(2) can claim is to give the Supreme Court the power to judicially review any post-Constitutional 'Legislation' just as article 13(1) gives it the power to review pre-Constitutional 'Legislation' inconsistent with the fundamental rights.

Doctrine of Reasonable Doubt

The doctrine of reasonable doubt as judges and lawyers are aware, is a firmly established doctrine of constitutional law. It is a doctrine which judges have created and applied in all branches of law including criminal law. In constitutional law the doctrine holds that an act of the legislature must be presumed by the courts to be constitutional until its unconstitutionality is demonstrated beyond reasonable doubt. The doctrine further states that all reasonable doubts regarding the constitutionality of a law will be resolved in favour of the law. The fact that Government, Parliament and the judges of the Supreme Court had hitherto acted on the basis that article 13(2) does not apply to an amendment of the Constitution should have been respected by the judges in the present case, when they felt themselves called upon to examine the correctness of this interpretation. Members of Government and Parliament also take the oath to

uphold the Constitution. Judges ought then to assume that under the oath members of Parliament consider with equal care the constitutionality of every law they pass. Judges in the present case have nowhere indicated in the judgment why this salutary doctrine of judicial constructions was not followed. When judges invalidate a statute which the Government and Parliament have approved, and whose principles they have affirmed time and again "public interest" required that judges should have availed of this doctrine rather invalidate legislation by a narrow majority of 6 to 5. It is precisely in situations like this, when six judges affirm one way and five other equally affirm the other way that there is reasonable doubt and it becomes the duty of one of the six to involve the 'Doctrine of Resonable Doubt'. If this had been done, it would have also avoided the unsettling effect of discarding the doctrines of *Stare Decisis* and introducing 'propective over-ruling'.

"Fundamental" Rights and Wrong

The Constitution, as the judges have rightly indicated, did not create fundamental rights. They existed before the Constitution and the Constitution only gave them a form and recognition. They are not exhaustive either. There is no doubt these rights have to be cherished by the Courts as well as all the citizens. It is nobody's case that they should not be. But at the same time these rights have never been absolute, nor did the Framers of our Constitution intended them to be so. Some of them are not rights at all. They are mere privileges and immunities. Most of them represent personal and private rights and as such they carry with them, therefore, their own limitations. These limitations have been imposed not because governments are "power drunk" but because such rights have to be subordinate to 'public interest'. We should also remember that the attack on rights in modern times comes not so much from governments as from individuals and groups. The Republic was established to ensure political, economic and social justice for all and not for individuals or a group only. Social and economic justice then cannot be translated merely into terms of personal and private rights. Private rights when they infringe the rights of others what the public rights or interest are, was embodied in the Constitution and excluded

from the jurisdiction of the Courts, not only to remove them from the field of political or judicial controversy, but to cast a duty on the State to translate them into laws. By that token it is the duty of the judges as of the Government and Parliament, as guardian of the Constitution, to uphold them even in derogation of personal or private rights. The Framers of our Constitution sought to establish a legal order not individual rights.

Governments and Rights

The duty of a government is to govern, i.e., to maintain peace and order and work for the benefit of all. In this process governments and legislatures have to place limitations and restraints on individuals' rights. The nature these limitations, and the public interest they are to subserve have been indicated in Parts III and IV of the Constitution by the Makers of our Constitution. The interests of public order, safety, health, decency, morality, security of the State, and the sovereignty and integrity of Indian come above these individual rights and have to be regulated. The concepts of what is public interest are not static. Individual rights change with human ingenuity with discoveries and with human progress. Rights thus need to be constantly revised. Regulation and restraint do not impair them as such. There is continuous attempt by the State to balance private and public interest and in the process the sphere of what the State will protect at any time enlarges from the point of view of some and contracts from the point of others. As long as there is redress for every wrong there is nothing anybody need complain about and that is what courts are meant for.

CHAPTER 6

Judicial Activism

INDIA is nowadays witnessing a judicial revolution. Judges are delivering judgments on all aspects of national life, including environment, pollution, garbage removing, and even mosquito killing order given to MCD in the National Capital Region. It seems that whole judiciary has been galvanized into action to purge all the national, social and political maladies of the country. Big leaders like P.V. Narasimha Rao, Kalpanath Rai, Jayalalitha, Sukhram, Sheila Kaul and a lot are facing cases in the Courts. The scams like Hawala, Urea, Fodder, Housing, Telecom etc. are under various stages of investigation and are under sharp judicial eyes. Even CBI, state governments and high officials are admonished by the Courts. Courts are humbling all the big and mighty of the country. As all the cases are at sub-judicial stage, no one can comment on any case in any capacity. But we have tried to present a few specimen of judicial activism as viewed through the newspapers.

Much too active

There is nothing basically wrong with the overall purpose of the Supreme Court's directive on ending the nexus between criminals, politicians and others, but the manner in which it has issued its order as its contents may raise a few questions. For instance, the Supreme Court wants the formation of a powerful body free from all pressure to investigate such links on the basis of the Vohra Committee's findings. The court may be right in its

belief that the task cannot be entrusted to an existing agency, as the Centre wants, since the latter is unlikely to be free of external influence. But the course which the judiciary has prescribed is not quite in conformity with the way all institutions are expected to function in a democracy. The best method is not to cast aspersions on existing agencies, but to ensure that they function satisfactorily, which the court has been doing in some instances by taking direct responsibility for the inquiry into certain scams. The establishment of a new body, however, is likely to create confusion vis-a-vis the other agencies. For a start, will it have overriding powers in relation to them in, say, the matter of securing professional help in conducting investigations? Will the new body be wound up after it has completed its task? Will such a step create an unhealthy precedent in that demands may be made later for setting up similar bodies whenever something controversial takes place? And how is one to guarantee that the new body will be genuinely free of all bias and influence?

Unless questions such as these are satisfactorily answered, a step such as the one which the court has ordered can create serious administrative and even political problems. That is not all. The court's recommendation that the President set up such a body in consultation with the Prime Minister and the Lok Sabha Speaker is also surprising. As the titular head, the President may sign the papers for the formation of the proposed "high-level" panel, but the move has not to be initiated by the Prime Minister and his Cabinet who are the prime movers in a parliamentary system. The court should have directed its advice, therefore, to the Central Government and not to the President. Judicial activism has had wide support because of the executive's many failures. The links of the supposedly political respectable with the underworld is a glaring example of the political class's inability to act because of obvious reasons. But even while welcoming judicial intervention, there has been the hidden fear that it may overstep its limit. The latest directive may strengthen this apprehension.

Editorial, *Hindustan Times*, 22-3-97

Un-accountable

The Supreme Court order on Thursday directing that top officials of the government were personally accountable for any actions taken in the discharge of their official responsibilities introduced a new element into the bureaucratic order which so far had functioned like a government within the government. Though in an earlier instance, the Chief Secretary of a State Government had been sent to jail for his failure to carry out the court orders, the apex court this time left little room or the doubt or ambiguity in asserting that officials of the bureaucratic hierarchy top downwards could be held to account for their share of responsibility in a particular case. Dismissing a Bihar Government appeal against a Patna High Court judgment imposing penal costs on a government servant for failure to comply with the court orders, the apex court pointed out that it had to be taken as a settled legal position that the bureaucracy was not to be treated as an island of immunity in the course of a judicial review of governmental actions. Now, it would serve some public purpose if the apex court's direction sets off a process of introspection and reform within the bureaucratic set-up. This can happen either through a voluntary initiative, like the campaign against corrupt officials waged by young officials in UP, or it may be done through a rewriting of the service rules (which had remained unchanged since the British left India) so as to introduce a regime of accountability.

There, however, is a flip side to the situation. The Supreme Court's order makes up one wonder as to what extent could the judiciary go on enlarging the sphere of its supervision over other branches of the State that had better have in-built mechanisms for self-correction. There would be physical limits to the extent the courts can take on the additional load. Particularly so, when the courts themselves are burdened with huge arrears which invariably result in long delays in the administration of justice.

Editorial, *Hindustan Times*, 15-2-97

Strategy to modernise civil justice system

Ahmadi's work in SC to serve as model

The Government is actively considering implementation of a three-pronged strategy suggested by the legal experts, for modernisation of civil justice system in the country.

This strategy, worked out by the legal luminaries, is intended to streamline the administration of civil justice in the high courts and 430-odd district courts following the initiative taken by the Chief Justice of India, Mr. Justice A.M. Ahmadi, which resulted in the Supreme Court arrears' reduction.

"The report seeks to duplicate the apex court success story in the realm of arrears reduction in our lower courts which are the cutting edge of the justice delivery system in India," Additional Director General Dr. A.M. Singhvi said.

Dr. Singhvi, who is also a member of the Experts Committee, feels that the genesis of the study undertaken by the experts is the Chief Justice of India's initiative in the apex court and his desire to extend this to the lower courts.

The three-pronged strategy includes court administration, case management and Alternative Dispute Resolution (ADR) or Consensual Dispute Resolution (CDR).

The administration of courts envisages computerisation of the courts which will assist classification of cases subject wise, monitoring and coordination, generating cause lists through computers, rationalising the entire information system and interlinking of all high courts and district courts in common information grid. Induction of case management system will help stick to deadline which in simple terms means that the management of the case will be controlled by the court and not the various parties to the case.

The system can be adopted without altering the legislative rules. These changes can be brought under the rule making powers of the high courts.

The last phase of the changes in the civil justice system is the Alternative Dispute Resolution (ADR) or the Consensual Dispute Resolution (CDR). This would help lessen the burden of petty cases pending for a long time.

After the institution of a case, the parties will be compelled to choose from a menu of ADR options. The study suggested six menus in this form the system. These are: Arbitration, Lok Adalats, judicial settlements, Early Neutral Evaluation (ENE) by which a qualified "neutral" will give his opinion about the merit of the case and induce the parties to settle the case, mediation and conciliation.

The report does not depend on the particular State or Central legislative amendments but can be implemented purely by the amendments of the rule of the Civil Procedure Code (CPC) which can be done by the Rule Making Committee of each High Court.

Dr Singhvi described it as a "three-pronged attack" to beat the back-log. Two prongs—administration and case management—are intended to expedite the disposal of cases. The third prong—CDR or ADR is designed to take cases out of the "pipeline" and not only settle them by alternative consensual means but also make more space in the pipeline.

The plenary meeting of Law Secretaries and Law Ministers also laid emphasis on promotion of ADR organisations in the country. They further recommended that training courses should be organised for ADR neutrals so as to equip them with reasonable standard of expertise and skill. They called upon the Central Government, State Governments and various public sector undertakings to incorporate ADR clauses in their contracts.

The annual report of the Law Ministry showed that pendency of the cases in different High Courts is on the rise every year. For instance, in 1991, there were 21,99,936 pending cases while in 1995 the pending cases in the high courts (except Calcutta) were 29,01,234.

However, Dr Singhvi feels, transformation in administration of the Supreme Court suggests that if these changes are affected in the high courts and the district courts, the pendency of cases will be zero by the turn of the century.

Syed Liaquat Ali, *Hindustan Times*, 9-3-97

Judges must judge themselves, says Verma

Need to review sentencing policy in criminal cases

Justice J.S. Verma of the Supreme Court today underlined the need for judges to set the norms to judge their own performance.

"These days we (Judges) are telling everyone what they should do. But who is to tell us?" Justice Verma asked while inaugurating a two-day national seminar on "Criminal Justice in India".

"We have the task of enforcing the rule of law. But does that exempt and even exonerate us from following it?" he asked.

Justice Verma, who was described as "the Chief Justice in-waiting", by Law Minister Ramakant Khalap said that if judicial activism gave the Supreme Court the power to ensure that the State performed its duties to the people, it also involved the performance of the Judiciary.

He said that it was necessary for the Apex Court to act in the public interest under its writ jurisdiction to protect the Fundamental Rights of the people against arbitrary State action, but it was equally important for judges to regulate their own actions.

He said that this was part of the criminal justice system and added that if any agency or organ of the State had the responsibility to perform its duty towards the people, judges too had an equal responsibility.

The Chairman of the Law Commission of India, Mr. Justice K.J. Reddy, the Minister of State for Law and Justice, Mr. Khalap and the president of the Criminal Justice Society of India also spoke at the seminar.

Sitting Supreme Court Judges, Chief Justices, and Judges of the Delhi and Patna High Courts were among those who attended the seminar jointly organised by the Law Commission of India and the Criminal Justice Society of India.

Justice Verma called for a review of the "sentencing policy" in criminal cases saying guidelines were necessary to the extent possible. He said the facts and circumstances in each case were different and much would lie at the discretion should be reduced to an "irreducible level".

Referring to the "incorrect interpretation of the term judicial activism", Justice Verma said that ordinarily, judicial activism meant the access to justice to the common man and the enforcement of his Fundamental Rights.

Mr. Khalap said that healthy administration of cirminal laws was a must for he proper functioning of constitutional democracy. The Minister called upon the participants to suggest appropriate measures to deal with offences committed by politicians, public servants and others in the wake of technological advances and economic liberalisation so that the accused were punished without delay.

Certain rulings cause ire: Sangma

Lok Sabha Speaker P. A. Sangma today said that the tendency exhibited by certain courts to make avoidable observations had contributed to resentment and often tempestuous situations in the legislature.

Delivering a key-note address at the three-day Asian Media Convention, he said that the members of the legislature had a common measure of respect for the judiciary. Discussions about sub-judice matters was not allowed, he added. However, what contributed to resentment and often tempestuous situation in the legislatures were tendencies "which have been exhibited occasionally by certain courts to make avoidable obiter dicta."

The Speaker's observations assume significance in the ongoing debate whether the courts overstepped their limits while dealing with certain cases.

Mr. V.R. Krishna Iyer, former Supreme Court Judge, while addressing the convention said that though he had read in several newspapers the use of the term "judicial activism", its use was incorrect. Citing the example of legendary American Judges who wanted desegregation, he said that they too were called judicial activists and the debate of the judiciary exceeding its brief had come up at the time as well.

However, their historical judgments and observations had later led to a change of the entire nation's attitude toward segregation. What was important to remember, he said, was that

the Parliament, Judiciary and the Press should work for the benefit of the common citizen of this country. This citizen he pointed out was struggling in the villages of the country.

These three, the Press, Judiciary and the Parliament, would have achieved their goal if they can make the poor Indian happy.

Hindustan Times, 23-2-97

Judging the judges is everyone's right

A journalist played the role of the devil's advocate by criticising the judicial activism. A lawyer, however, defended, a politician promised to "make things better" and a judge ruled that "contempt of courts is no answer to genuine criticism".

Speaking at a seminar on "Judging the Judges", organised by the Delhi Administration Officers' Academic Forum today, president of the Supreme Court Bar Association (SCBA) R.K. Jain maintained that only the lawyers have the right to judge the judges. He said criticism of the judiciary is not justified because this the "only organ of the state" which is performing its duties satisfactorily.

"One has to see the merit of the case before criticising any judgment. The normal perception in the so-called VIP cases is that if the accused is punished, the judge is dishonest. This is no criteria for judging a person or his judgment. And judges always speak through their judgments, they cannot be judged before one studies the judgment," Mr Jain said.

Referring to the theme of the panel discussion, Mr. V.N. Narayanan, Editor of *The Hindustan Times*, said that the media has the right to "judge the judges". He added that a number of judges have started "playing to the gallery" instead of speaking through their judgments.

Speaking on the law of contempt, Mr Narayanan said that it was indeed condemnable. This law, according to him, vested in the same person on the right to prosecute and authority to sentence.

"Judicial activism has resulted in demoralisation of the administration and delegitimisation of both the Government and Parliament," he added.

Chief Metropolitan Magistrate (CMM) Prem Kumar countered this attack by saying that personal experiences have to be ignored when one is reviewing the role of the judiciary on the whole. "In the present circumstances, when people's expectations and aspirations are being totally ignored by both the legislature and the executive, it is the court which has come to their rescue. The judiciary has done a remarkable job which cannot be brushed aside or criticised," the CMM said.

Mr. Sita Ram Yachury, member Politburo, CPI-M, said while judging the judiciary, it is not the integrity of the judges which is being questioned, it is the infallibility of the individual which is under scrutiny.

"The courts are the last resort of a person under distress. While talking about judiciary and courts, the issue of pendency of large number of cases and corruption in lower and higher judiciary has to be discussed. Unfortunately, I come from a tribe (politicians), which is not held in very high esteem as the judiciary. Even then, I would like to say that we are making efforts to improve the system so that litigants do not suffer because the judicial officers have a large number of cases. The appointment of judges is a very important task. The United Front Government has also promised under the Common Minimum Programme that the pendency of the cases will be brought down," Mr. Yachury said.

He said there is proposal to appoint a National Judicial Commission which will ensure that appointment of judges is not made by a single authority or a group of individuals. "Of course, the Commission will be answerable to an authority. The objective is to make the whole system more accountable," he added.

Mr. Justice H.R. Khanna, former judge of the Supreme Court, said the fact that the rate of conviction has come down from 239 per cent in the early sixties to six per cent these days.

"The criminal law is supposed to be the most potent instrument of social defence. In the present circumstances, when most of the guilty are let loose, the victims or their relatives or friends try to settle their own scores. Their methods obviously

are illegal. The reasons why such a situation has arisen may be the pendency of cases or the lesser number of judges or simple callousness of the judicial officers. This is a very unhappy state of affairs," Mr. Justice Khanna commented.

About the judge's allegedly "over-sensitivity" to criticism, Mr. Justice Khanna said, the judges should exercise tremendous restraint. "Genuine criticism has to be accepted. Punishment under the Contempt of Court Act is no answer to positive criticism. Some of our best judges hav always proved in their judgments why tremendous restraint is required while exercising such jurisdiction," he said.

Mr. Ram Jethmalani said that the survival of the Indian republic was solely due to the independent and the positive role played by the judiciary.

Hindustan Times, 11-1-97

Advani defends judicial activism

BJP president L.K. Advani today spoke strongly in defence of judicial activism but lamented the declining public confidence in the efficacy of the lower end of the judicial system. He also indicated that his party felt that the new Ganga water sharing accord with Bangladesh may not be in India's best national interest.

Addressing the State-level convention of Bihar BJP's Adhivakta Manch (Lawyers' Forum) here this afternoon, Mr. Advani said the judiciary's responsiveness to PILs had exposed numerous mega-scams. This had also caused "jitters" among a large number of politicians who had amassed wealth by corrupt means and who were now finding the noose tightening around them.

"The heavy fines imposed on a number of ex-Union Ministers by the Supreme Court have made the politicians panicky", he said, adding that while the common man was happy over the developments politicians were getting increasingly strident in their criticism of judicial activism.

Citing Prime Minister H.D. Deve Gowda's descriptions of PIL as "Political Interest Litigation", the BJP president said: "I don't deny that in this process sometimes excesses are committed. But that does not in any way detract from the soundness of the judiciary's overall response". As such, it would be unfortunate to condemn PILs, he added.

The current phase of judicial activism, M. Advani said, was rooted in executive inertia in punishing corruption. At the same time, the common man found the lower-end judicial system "unaffordable, inaccessible, unintelligible, excruciatingly slow and often vulnerable to pressures from the moneyed and the powerful".

The BJP chief, who was given a warm welcome by lawyers from 45 districts of Bihar who were attending the convention at Bharatiya Nritya Kala Mandir, said the legal fraternity could do much to reform the system. Lauding the legal fraternity's role during Emergency, Mr Advani paid special tributes to Justice H.R. Khanna for his dissenting judgment in the famous habeas corpus case of that time. He hoped that he would be suitably honoured next year on the 20th anniversary of "Indian democracy being liberated from authoritarian bondage."

Welcoming Mr Advani, Adhivakta Manch State chief and lawyer for the main petitioners in the fodder scam case Ravi Shankar Prasad said the term "judicial activism" was a misnomer. The judges were carrying out their judicial activity imposed upon them by the Constitution.

Addressing a Press conference at State BJP headquarters earlier, M. Advani sought to show how the BJP's response to the issue of corruption was different. In this connection, he pointed out that though convinced of the innocence of its Minister in Maharashtra the BJP made him resign because a respected figure like Mr. Anna Hazare wanted it.

Reiterating his party's stout opposition to the anti "anti-SC and anti-constitutional" move to extend reservation to Dalit Christians, Mr. Advani claimed that the idea had been also opposed by the National Commission for SCs, the Union Home Ministry, Planning Commission and several State Governments including Goa with its large Christian population.

Hindustan Times, 14-12-96

HC reserves order on Rao bail plea

The Delhi High Court today reserved its order on the anticipatory bail pleas of former Prime Minister P.V. Narasimha Rao and his former Cabinet colleague Capt. Satish Sharma in the Rs. 3.5 crore JMM MPs bribery case after hearing at length the arguments of the complainant, defence and prosecution.

Meanwhile, the CBI reiterated its earlier stand opposing the bail pleas on the ground that the accused "do not deserve the anticipatory bails on merit of the case". Arguing for the CBI, the counsel, Mr A.K. Dutt, contended that considering the gravity of the offence and the acts of the case, the accused should not be granted bail.

The CBI counsel placed before the court the facts and events of July 1993, in connection with the case. He told the court that the circumstantial evidence suggested that they (the accused) had definite roles in the bribery episode.

The prosecution counsel rejected the plea of Capt. Sharma's counsel that the accused enjoyed immunity from any criminal prosecution under Article 105 of the Constitution. The alleged acts were done outside Parliament, he added.

Senior counsel P.N. Lekhi, who was allowed to make representations at the hearing of the anticipatory bail petitions, contended that they (the accused) did not deserve liberty since they had violated democratic norms. The offences allegedly committed by them were worse than sedition, Mr. Lekhi added. Opposing the bail pleas, he said that Parliament could not be a "market place".

However, Mr. P.P. Malhotra, counsel for Capt. Sharma, argued that except Parliament, no authority could question the acts of the accused.

Earlier, Mr. Rao's counsel Mr. R.K. Anand, argued that the facts in the two chargesheets filed by the CBI in connection with the case were substantially different from each other and the accused were entitled to bail on this ground itself.

It has been alleged that the four JMM leaders—Messrs Shailendra Mahato, Simon Marandi, Suraj Mandal and Shibu Soren—were bribed by the accused to defeat a no-confidence motion in July 1993 against the Rao-led Congress Government.

Hindustan Times, 14-12-96

Rao gets bail in JMM case

The Delhi High Court today granted bail to former Prime Minister P.V. Narasimha Rao, former Union Minister Satish Sharma, former Karnataka Chief Minister Veerappa Moily and four JMM leaders in the 3.5 crore JMM MPs bribery case.

Mr. Justice S.K. Mahajan, while granting anticipatory bail to the former Prime Minister and Mr Sharma, said that the accused would be enlarged on bail after furnishing a bail bond of Rs. 50,000 and a surety of the like amount, in the event of their arrest.

Mr. Justice Mahajan also granted regular bail to the four JMM leaders—Shibu Soren, Suraj Mandal, Simon Marandi and Shailendra Mahato, ending their nearly four month long incarceration. The High Court ordered their release from the Tihar Jail on a personal bond of Rs. 50,000 and a surety of the like amount. The court also imposed additional bail condition asking them to surrender their passports to the CBI within a week and restrained them from going abroad without prior permission of the trial court.

Meanwhile Mr. Justice Mohamed Shamim granted anticipatory bail to Mr. Moily and two of his Cabinet colleagues—Mr. H.M. Revanna and Mr. Ramalinga Reddy and businessman Mr. G. Thimmegowda. The court ordered their release on bail on similar conditions. The CBI in its supplementary charge-sheet filed before the trial court on Dec. 9, had accused them of involvement in the bribery case.

The High Court directed the four JMM leaders not to operate the bank accounts, in which the alleged bribery money was deposited, without the permission of the court. They were also asked to help in the investigations as and when needed.

The High Court noted that the anticipatory bail granted to Mr. Rao and Mr. Sharma, would be valid till their regular bail pleas are decided by the trial court and seven days after. The matter would come for hearing before the special court of Mr. Ajit Bharihoke on Jan. 8.

Accepting the anticipatory bail pleas Mr. Rao, Mr. Justice Mahajan said that he was prima facie not in argument with the arguments forwarded by senior counsel Mr. R.K. Anand, dealing

with the question of Parliamentary privileges for the MPs under Article 105 (2) of the Constitution and the application of the Prevention of Corruption Act.

He said the immunity given to the MPs under the article cannot be extended to those cases where an offence was committed outside Parliament or when a criminal conspiracy had something to do within Parliament.

The former Prime Minister took the plea that the Constitution accorded immunity to MPs from being tried by a court of law for their acts inside Parliament. However, the court made it clear that it was not making any observation on the question of immunity to the Members of Parliament.

Mr. Justice Mahajan said that he was of the prima facie opinion that Members of the Parliament are public servants within the meaning of Section 2(C) of the Prevention of Corruption Act. Merely because there is no sanctioning authority for their prosecution, it cannot be said that the provision of the Act will not be applicable, he added.

Hindustan Times, 21-12-96

Prabhakar Rao's bail plea adjourned

Justice V. Bhaskara Rao of Andhra Pradesh High Court, who is hearing the petition for grant of anticipatory bail by P.V. Prabhakar Rao, son of former Prime Minister P.V. Narasimha Rao and an accused in the 133 crore urea scandal, adjourned the matter till March 25.

Mr. Prabhakar Rao had filed anticipatory bail petition on receipt of summons from the Enforcement Directorate (ED), New Delhi. Mr Rao contended that he apprehended arrest by ED as the happenings in the past prove that all those who were issued summons were arrested when they presented themselves for interrogation. Stating that he was not in a position to appear at Delhi because of medical advice not to travel, he sought to be examined by the directorate at Hyderabad.

Mr Prabhakar Rao stated that he was extensively interrogated by the ED on Sept. 4 and Nov. 11 and the authorities

found nothing against him. He further stated that about 20 remand reports were filed before the concerned courts by the ED and nowhere his name was mentioned as one of the conspirators in the said violation of foreign exchange rules. He contended that there were genuine reasons for not being present for interrogation on Feb. 13 and 24 and March 10 and March 17. He submitted to the court that he was willing to cooperate with the investigations and requested that the enforcement officials examine him at Hyderabad.

The counsel for ED submitted to the court that three was no reasonable apprehension made out by the petitioner for grant of anticipatory bail.

Hindustan Times, 21-3-97

Jaya, Kannappan released on bail

Former Tamil Nadu Chief Minister Jayalalitha was released from the central prison here this evening amidst high drama, seven hours after she was granted bail by the Madras High Court.

A tired looking Jayalalitha who had spent 28 days in judicial custody, emerged from the prison doors at 5.35 p.m.

Bail for Mrs Jayalalitha was ordered after the senior counsel for the prosecution, Mr. N. Natarajan, conceded that investigations into the two cases in question, namely, the Rs. 7 crore coal import scam and the possession of disproportionate assets, did not any longer require her "custodial interrogation".

Ordering bail for former Minister for PWD and Power S. Kanappan, who is an accused is the coal case, the judge said that since the accused number one in the case, namely, Ms. Jayalalitha, was being granted bail, the accused number two, Mr. Kannappan, need not be kept in custody. There was no substance in the prosecution's argument that Mr. Kanappan, would threaten officials and tamper with evidence because his party was not in power now, the judge said.

The ruling in Ms Jayalalitha's case came minute after the principal judge, Mr. A. Ramamurthy, had extended her remand

till Jan. 13. He had said that he could not but extend the remand in the absence of a formal order from the High Court.

Ms. Jayalalitha and Mr. Kannappan were however, required to furnish a bond of Rs. 50,000 each with two sureties of a like amount, to the satisfaction of the principal sessions judge.

They could not leave Chennai's Police limits without the prior permission of the court and should not make disparaging remarks against the administration of justice. The judge further said that both the accused must make themselves available whenever the investigators wanted to talk to them but the investigations, on their part, should give them adequate prior notice.

But Justice Rangaswamy made it plain that if the bail conditions were violated, the bail would be liable to be cancelled.

Hindustan Times, 3-1-97

CBI pulled up for delay in fodder scam probe

The Patna High Court today pulled up the CBI for delay in completing the investigation into Animal Husbandry (AH) scam cases and asked for specific dates from the CBI court, within which they would complete the investigation.

The division bench comprising Mr. Justice S.N. Jha and Mr. Justice S.J. Mukhopadhyay, which is monitoring the CBI probe into the AH scam, reserved its orders till March 5 which has also been fixed as next date of hearing.

The entire CBI top-brass at Patna including Joint Director (East) U.N. Biswas, DIG Ranjit Sinha and SP (Patna) Javed Ahmad along with the legal advisor, Mr. Sharma, who had come from Delhi were present in the court during the hearing.

As soon as the court assembled, the counsel for Samta Party leaders, who are petitioners in this case, handed over to the court a copy of the entire order sheet of the Supreme Court in the Jain hawala case as well as the A.C. Pradhan case. These two cases had been pointed out by the apex court in its last

order to be the guideline for the Patna High Court in monitoring the AH scam case.

The court expressed displeasure over the manner in which the affidavit filed by the CBI last week had been drafted.

It was for the first time since the High Court has started monitoring the AH scam cases that the judges called each of the three senior CBI officers and asked for the detailed of the cases which were pending at their respective level and also enquired as to how much more time they would require to complete the investigation. Mr. Ranjit Sinha told the court that RC Case No. 20, which is being billed as the most important case concerning the conspiracy angle of the scam, had reached his stage and he would complete it and send it to the Joint Director within the next 10 days.

Similarly Mr. Biswas and Mr. Javed Ahmad explained to the court the position of the cases pending before them.

Hindustan Times, 21-2-97

HC notice to Cong chief on foreign funds

3-cr contribution from Germany unaccounted

The Delhi High Court issued show cause notices to Congress President Sitaram Kesri, the Central Board of Direct Taxes and the Ministry of Home Affairs, on a petition seeking Mr. Kesri's prosecution in the Rs. three crore Foreign Contribution Regulation Act (FCRA) violation.

A Division Bench comprising acting Chief Justice, Justice Mahinder Narain and Justice S.K. Mahajan, directed the counsel for the Board, Mr. R.D. Jolly, and counsel for the Ministry, Mr Abhishek Singhvi, to file their replies by May 20.

Mr Prashant Bhushan appeared as counsel for the petitioner, Mr. Madhuresh, a freelance journalist from Patna.

According the petition, Income Tax Department, while probing the accounts of the Congress Party for the assesment of years 1993-94 and 1994-95, detected a serious violation of FCRA by the party, in having received foreign contribution from

Germany to the tune of Rs. three crore during the said period without prior permission of the Central Government as required under the Act.

The party did not respond to several reminders seeking details of the contribution. Mr. Kesri and the party's several accounts officers were then interrogated by the IT sleuths, said the petition. The officials concluded that this was a FCRA violation case and the report was sent to the FCRA wing of the Ministry of Home Affairs for action against Mr. Kesri.

The Party did not provide proper accounts despite being given several opportunities. Considering the time bar limit, the Income Tax Department imposed a fine of Rs. 24 crore on the party as a statutory duty, said the petition. It added that no action was taken by the FCRA wing or the Home Affairs ministry though it was proved that Kesri had encashed the said foreign currency cheques without the prior permisssion of the Government.

The petition further mentioned that Mr. Kesri met the then Prime Minister Mr. H.D. Deve Gowda, on March 13 and requested him to drop the case and other proceedings of the Government.

The petition also stated that Mr. Kesri had informed Mr. Gowda on March 26, that Mr. A.K. Antony was the temporary treasurer during the relevant period as he (Kesri) was out of India. Mr. Antony, however, pledged his innocence in a speech in the Kerala Assembly and said that his involvement would have to be proved, the petition added.

On March 29, Mr Gowda asked for an appointment with Mr. Kesri. Mr. Kesri agreed to meet him at 2 p.m. on March 30. But by 12.30 p.m. on March 30, Mr. Kesri met the President and delivered the letter declaring the withdrawal of support to the United Front Government, stated the petition.

The petition alleged that the concerned officials of the Home Ministry and other officials did not take any action against the party of its official for violation of FCRA, punishable by a term of imprisonment up to five years, due to the political equations of the Congress Party with the ruling United Front coalition. It further alleged that this prosecution was being used as a bargaining ploy and seemed to have been the reason for withdrawal of support to the United Front Government.

"The petitioner said that the court was approached so that under its directions the law could take its own course without being thwarted on account of political manipulations and cynical partisan considerations."

Hindustan Times, 26-4-97

Contempt notice to Joginder for not adhering to deadline

A division bench of the Patna High Court monitoring the CBI probe into the Animal Husbandry scam, today directed CBI director Joginder Singh to show cause as to why contempt of court proceedings should not be initiated against him.

The court gave the direction after the CBI counsel conceded that the investigation into the conspiracy angle of the scam had not been completed. This was in spite of the undertaking to the court by Mr. Joginder Singh that this aspect of the investigation would be completed by March 11.

Mr. Joginder Singh has been directed to reply to the notice by April 10 and the matter would be taken up by the court on April 11.

The court today also issued notices to the secretaries of the State Assembly and the Legislative Council to reply to the allegations made by the CBI in its progress report submitted yesterday. The CBI had alleged that despite several requests by the CBI, the secretariats of the Legislative Council and the Legislative Assembly were withholding certain important documents needed for the CBI for the investigation. The court wanted to know under which provisions of the law had these documents been declared privileged documents.

The division bench comprising Justice S.N. Jha and Justice S.J. Mukhopadhya also expressed its deep displeasure over the lack of response from Mr. Joginder Singh to the letter sent to him by the court through the CBI counsel on the last date of hearing. After ascertaining from the CBI counsel that the letter had indeed reached Mr. Singh, the court said that the inaction

of the CBI Director was an insult to the court and showed that the was trying to prolong the investigation or even scuttle it.

The court also severely criticised Mr. Singh's role in referring to the Attorney-General the matter of filing the chargesheets in RC case No. 33/96 against the two accused MLAs Mr. R.K. Rana and Mr. Dhruv Bhagat. The court wanted to know at whose instance was the matter referred to the Attorney General even though there was not need to send it to him.

The court made it clear that only in a case of a difference of opinion between the Director and the Joint Director was the opinion of the Attorney-General required. For resolving the differences of opinion between other officers down the line a reference to the Attorney-General should not be made as it would also mean unnecessarily delaying the investigation. It was also pointed out by the court that in this particular case, Mr. Singh had himself communicated his approval for filing the charge-sheet against Mr. Rana and Mr. Bhagat on March 11. However, this approval was superseded by another fax message sent by CBI Director on March 14 as the matter had been referred to the Attorney-General in view of the dissenting note of the then DIG, Mr. Ranjit Sinha.

The court today also brought on record the fact that the CBI had mentioned in its progress report that both Mr. Ranjit Sinha and Mr. N.C. Dhoundhiyal had been dissociated from the animal husbandry scam probe. In fact, while hearing a petition filed by the petitioners in which Mr. Dhoundhiyal's conduct in allegedly trying to influence the ex-Chief Justice of the High Court has been challenged, the court observed that if Mr. Dhoundhiyal was trying to meddle with the investigation it should be immediately brought to the court's notice and it would take appropriate action.

Mr. U.N. Biswas informed the court that he was in touch will the Chief Commissioner of Income Tax. He added that the CBI and the Income-Tax Department were working together on a computer system, based in Calcutta in which all the facts and figures were being jointly stored.

The CBI counsel today informed the court that the State Government was not providing facilities like residential accommodation and vehicles to the CBI officials in spite of repeated requests. The Additional Advocate General Mr. Shashi

Anugraha Narain, assured the court that once the requests were formally communicated, he would try to ensure that all facilities were provided. The CBI counsel today provided the court with details of the status of the different cases.

CBI Director Joginder Singh today said the agency will have to collect foolproof evidence before filing the charge-sheet in the multi-crore fodder scam in Bihar, adds PTI.

Reacting to the Patna High Court's castigation of the agency, the CBI director said "if I have committed any mistake, I will apologise".

Hindustan Times, 29-3-97

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Ravi Prakash is currently the Director of a Rural Research Institute in Delhi. He has written on a wide range of subjects like free legal aid movement, problem of the general public. He is also the author of a number of books on human rights, and scientific problems of the people. He has contributed a number of research articles to Indian and foreign magazines and newspapers.

Premlata Sharma did her M.A. and M.Phil. in Political Science from Agra University, Agra. She has so far participated in about 25 Conferences/Seminars/Symposia of National and International level and has contributed a number of research papers to various reputed journals.

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